IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUSSELL NAKATSUKA,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 71466

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Russell Nakatsuka appeals from an order of the district court denying a July 28, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time served.[1] First Judicial District Court, Carson City; James Todd Russell, Judge.

Nakatsuka claimed the Nevada Department of Corrections is failing to deduct statutory credits from his minimum sentence pursuant to NRS 209.4465(7)(b). Nakatsuka has already had a hearing before the parole board. Since a parole hearing would be the only relief available and no statutory authority or case law permits a retroactive grant of parole, *see Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), Nakatsuka's claim is moot. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989).

Moreover, Nakatsuka's claim lacks merit. At the time he committed his crimes, NRS 209.4465(7)(b) provided credits earned pursuant to the statute "[a]pply to eligibility for parole unless the offender

[1]This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." 2003 Nev. Stat., ch. 426, § 8, at 2578; *see Weaver v. Graham*, 450 U.S. 24, 31-33 (1981) (statutes in effect at time of offense govern). Nakatsuka falls into the exception because the sentencing provisions for second-degree murder specified "eligibility for parole [begins] when a minimum of 10 years has been served." 2003 Nev. Stat., ch. 470, § 4, at 2945. And Nakatsuka failed to demonstrate a violation of the Equal Protection Clause because he failed to show he was similarly situated to those whose sentences did not fall within NRS 209.4465(7)(b)'s exception, and precluding the most serious offenders from early release is rationally related to a legitimate governmental interest. *See Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) ("[P]risoners are not a suspect class and there is no fundamental constitutional right to parole."); *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000) (discussing levels of review). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Russell Nakatsuka
Attorney General/Carson City
Carson City Clerk