

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGELIO HERRERA-IZARRARAS,  
Appellant,  
vs.  
DWIGHT NEVEN, WARDEN; THE  
STATE OF NEVADA OFFENDER  
MANAGEMENT DIVISION; AND  
STATE OF NEVADA PAROLE BOARD,  
Respondents.

No. 73552

FILED

APR 11 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Rogelio Herrera-Izarraras appeals from an order of the district court denying his August 5, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time he has served.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Herrera-Izarraras first claimed the Nevada Department of Corrections (NDOC) is failing to apply statutory good-time credits to his minimum and maximum sentences. Herrera-Izarraras' claims lack merit. NDOC records demonstrate it is applying statutory good-time credits to his maximum sentence. Further, Herrera-Izarraras has already received the only remedy available for his minimum-sentence claim—a hearing before the parole board—and no statutory authority or case law permits a

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

retroactive grant of parole.<sup>2</sup> See *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989). We therefore conclude the district court did not err by denying these claims.


Herrera-Izarraras next claimed NDOC has failed to properly credit him for educational programs. He contended the credits he received for educational programming did not match the “advertised” days and he should be earning an additional 10 credits per month because he has been enrolled full time in school. Herrera-Izarraras failed to claim specific facts that, if true, would have entitled him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). He did not indicate what the advertised educational programming credits were and how they differed from the credits NDOC records show he received. Further, the additional 10 credits per month Herrera-Izarraras sought were at the discretion of the director of NDOC and not a matter of right. See NRS 209.4465(2) (“[T]he Director *may* allow not more than 10 days of credit each month for an offender whose diligence in . . . study merits such credits.” (emphasis added)). We therefore conclude the district court did not err by denying this claim.


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<sup>2</sup>As a separate and independent ground to deny relief, Herrera-Izarraras’ minimum-sentence claim lacked merit. NRS 209.4465(7) provides for the sought-after credits and begins, “[e]xcept as otherwise provided in subsection[] 8.” NRS 209.4465(8) specifically excludes offenders convicted of category B felonies from applying statutory credits to their minimum sentences. Herrera-Izarraras was convicted of a category B felony, see NRS 193.330(1)(a)(1); NRS 200.366(3), for an offense committed after NRS 209.4465(8)’s effective date. And for this same reason, the application of NRS 209.4465(8) would not have violated the Ex Post Facto Clause. See *Weaver v. Graham*, 450 U.S. 24, 29 (1981) (a “critical element” of an ex post facto law is that it applies to events occurring before the law’s enactment).

Finally, Herrera-Izarraras raised several claims challenging the validity of his judgment of conviction. Such claims may not be raised in a petition that also challenges the computation of time served. See NRS 34.738(3); *Griffin v. State*, 122 Nev. 737, 742, 137 P.3d 1165, 1168 (2006) (discussing whether the attorney general or the district attorney is the appropriate respondent for each type of petition). We therefore conclude the district court did not err by denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Linda Marie Bell, District Judge  
Rogelio Herrera-Izarraras  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk