

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID GONZALEZ,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 72427

FILED

DEC 29 2017

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

ORDER OF AFFIRMANCE

David Gonzalez appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

In his August 8, 2016, petition, Gonzalez first claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum terms. The record demonstrates Gonzalez is serving prison terms for category B felonies he committed in 2014.² For these reasons, the NDOC may only apply Gonzalez' statutory credits toward his maximum term pursuant to NRS 209.4465(8)(d). Given these circumstances, we conclude the district court did not err in dismissing the petition.

¹This 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).

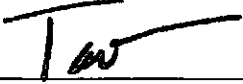
²The record demonstrates Gonzalez was convicted of robbery, robbery with the use of a deadly weapon, and conspiracy to commit robbery, category B felonies. See NRS 193.165(1); NRS 199.480(1); NRS 200.380(2).

Second, Gonzalez claimed another inmate earns 20 days of credit per month and the disparate treatment of that inmate as compared to him violated his equal protection rights. "The Equal Protection Clause of the Fourteenth Amendment mandates that all persons similarly situated receive like treatment under the law." *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). When a classification does not affect fundamental rights, the "legislation at issue will be upheld provided the challenged classification is rationally related to a legitimate governmental interest." *Id.*

Here, Gonzalez did not demonstrate he and the other inmate were similarly situated given differing offense dates and different statutes governing application of credits during the different offense dates. Further, Gonzalez did not demonstrate there was no rational basis for applying credits in a different manner based upon offenses and offense date. *See id.*; *see also Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) (recognizing prisoners are not a suspect class and applying rational basis test). Therefore, we conclude the district court did not err in dismissing the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
David Gonzalez
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk