

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMMANUEL JOSIAH CABALLERO,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 73704

FILED

MAR 14 2018

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

ORDER OF AFFIRMANCE

Emmanuel Josiah Caballero appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on March 30, 2017.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

Caballero claims the district court erred by denying his petition because the Nevada Department of Corrections (NDOC) is not applying the statutory credits he earned to his minimum sentence as required by NRS 209.4465(7)(b). The district court denied Caballero's petition after finding he was not entitled to have statutory credits deducted from his minimum sentence because he committed his crimes after NRS 209.4465 was amended in 2007 and NRS 209.4465(8)(d) excludes category B felons like Caballero from receiving credit toward their minimum sentence. The district court's findings are supported by the record,² and we conclude the


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


²Caballero was convicted of sexually motivated coercion and battery by strangulation with a deadly weapon—both these crimes are category B felonies. See NRS 200.481(2)(e)(2); NRS 207.190(2)(a).

district court did not err in determining Caballero was not entitled to have statutory credits deducted from his minimum sentence.

Caballero also claims the district court erred by denying his petition because NDOC was applying his statutory credits to his sentence differently than it applied the statutory credits to another individual's sentence. "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). Caballero has not demonstrated that he and the other individual are similarly situated. Caballero committed his crimes after NRS 209.4465 was amended to prohibit offenders convicted of category B felonies from receiving credit toward their minimum sentence, whereas the other individual committed his crimes before NRS 209.4465 was amended and contained this prohibition. See 2007 Nev. Stat., ch. 525, § 5, at 3177; see generally *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (observing "that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense"). Because Caballero and the other individual are not similarly situated, we conclude NDOC did not violate Caballero's right to equal protection.

Having concluded Caballero is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Emmanuel Josiah Caballero
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk