

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ODELL MCCOY,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 73413

FILED

APR 25 2018

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

ORDER OF AFFIRMANCE

Odell McCoy appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on March 21, 2017.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition, McCoy claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum term. The district court denied the petition because McCoy is currently serving a prison term for burglary, a category B felony, *see* NRS 205.060(2), and he committed his crime in 2012. For those reasons, the district court found the NDOC may only apply McCoy's statutory credits toward his maximum term pursuant to NRS 209.4465(8)(d). Given these circumstances, we conclude the district court did not err by denying this claim.²

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).

²We note McCoy also has a conviction for grand larceny to serve consecutively to his current sentence. The grand larceny count is a category C felony, *see* NRS 205.222(2), and McCoy would be entitled to have credit applied toward his minimum term for that count, *see* NRS 209.4465(7)(b), (8)(d).

McCoy also claimed the failure to apply his statutory credits toward his minimum term was a violation of the Equal Protection Clause. McCoy failed to demonstrate a violation of the Equal Protection Clause because he failed to demonstrate 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).

Finally, McCoy claimed the failure to apply his statutory credits toward his minimum term violated the Ex Post Facto Clause. McCoy's claim lacked merit. A requirement for an Ex Post Facto Clause violation is that the statute applies to events occurring before it was enacted. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). NRS 209.4465(8) was enacted more than 4 years before McCoy's crime, see 2007 Nev. Stat., ch. 525, § 5, at 3177, and its application did not violate the Ex Post Facto Clause.

Having concluded McCoy 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
Odell McCoy
Attorney General/Carson City
Carson City Clerk