

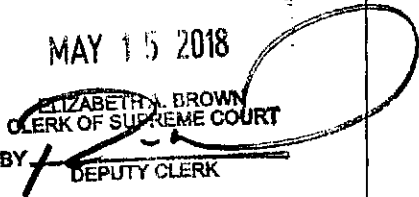
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY WAYNE ROSS,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN,  
Respondent.

No. 73411

FILED

MAY 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Billy Wayne Ross appeals from a district court order denying the petition for a writ of habeas corpus filed on March 21, 2017.<sup>1</sup> First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition, Ross claimed the Nevada Department of Corrections (NDOC) was not applying the statutory credits he earned to his minimum sentences as required by NRS 209.4465(7)(b). The district court denied Ross's petition after finding he was not entitled to have statutory credits applied to 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 from receiving credit toward their minimum sentence. The district court's findings are supported by the record,<sup>2</sup> and we conclude

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<sup>1</sup>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).


<sup>2</sup>Ross was convicted of four counts of burglary, three counts of robbery, and one count of attempted robbery—all of which are category B felonies. See NRS 193.330(1)(a)(2); NRS 200.380(2); NRS 205.060(2).


the district court did not err in determining Ross was not entitled to have statutory credits applied to his minimum sentence.<sup>3</sup>


Ross also claimed NDOC was violating the Equal Protection Clause by 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 116, 173 (2000). Ross has not demonstrated that he and the other individual are similarly situated. Ross 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 Ross and the other individual are not similarly situated, we conclude NDOC did not violate Ross's right to equal protection.

Having concluded Ross is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

<sup>3</sup>To the extent Ross claimed the application of NRS 209.4465(8) violated the Ex Post Facto Clause, his claim is without merit. *See Weaver v. Graham*, 450 U.S. 24, 28-29 (1981).

cc: Hon. James E. Wilson, District Judge  
Billy Wayne Ross  
Attorney General/Carson City  
Carson City Clerk