


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMMIE LEE WARE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; THE
STATE OF NEVADA DEPARTMENT
OF CORRECTIONS; AND THE STATE
OF NEVADA,
Respondents.

No. 72491

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

JIMMIE LEE WARE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; THE
STATE OF NEVADA DEPARTMENT
OF CORRECTIONS; AND THE STATE
OF NEVADA,
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No. 72492

ORDER OF AFFIRMANCE

Jimmie Lee Ware appeals from an order of the district court denying two postconviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Ware filed two separate petitions in the district court on June 14, 2016. In his petitions, Ware claimed the Nevada Department of

¹These appeals have been submitted for decision without oral argument. NRAP 34(f)(3).


Corrections (NDOC) improperly declined to apply statutory credits toward his minimum terms.² The district court denied the petition on the merits, as Ware has been convicted of category B felonies he committed after the effective date of NRS 209.4465(8)(d).³ For those reasons, the NDOC may only apply Ware's statutory credits toward his maximum terms.⁴ Therefore, we conclude the district court did not err in denying the petitions and we

ORDER the judgment of the district court AFFIRMED.



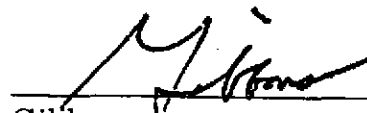
Silver

, C.J.



Tao

, J.



Gibbons

, J.

²On appeal, Ware appears to argue the NDOC has also failed to apply statutory credits to his maximum terms. Ware did not raise this issue before the district court and we decline to consider it in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

³Ware was convicted of two separate offenses of driving while under the influence of a controlled substance, category B felonies. See NRS 484C.400(1)(c).

⁴The district court also found Ware has already had a parole hearing for one of his convictions for driving under the influence of a controlled substance. Because parole is an act of grace of the State, the district court properly concluded Ware's parole hearing rendered the challenge to the calculation of his sentence for that conviction moot because the only remedy available would be to order the parole board to conduct a parole hearing. See NRS 213.10705; *Williams v. State Dep't of Corr.*, 133 Nev. ___, ___ n.7, 402 P.3d 1260, 1265 n.7 (2017).

cc: Hon. Linda Marie Bell, District Judge
Jimmie Lee Ware
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk