

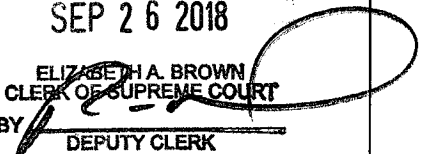
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ESTEBAN HERNANDEZ, A/K/A
ESTABAN HERNANDEZ,
Appellant,
vs.
JO GENTRY, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 74972

FILED

SEP 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Esteban Hernandez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Hernandez argues the district court erred by denying his July 26, 2017, petition. First, Hernandez claimed the Nevada Department of Corrections (NDOC) erroneously failed to apply his statutory credits toward his minimum terms. The district court concluded Hernandez was not entitled to relief because he was sentenced pursuant to statutes that specified minimum sentences that must be served before a defendant becomes eligible for parole.² See 1995 Nev. Stat., ch. 443, § 44, at 1181-82

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

²The record demonstrates Hernandez was convicted of first-degree murder with the use of a deadly weapon and he committed the offense in 1998.

(former NRS 207.030); 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165). Because the statutes specified minimum sentences that must be served before Hernandez becomes eligible for parole, the NDOC may not apply statutory credits to reduce Hernandez' minimum terms. See NRS 209.4465(7)(b); *Williams v. State*, 133 Nev. ___, ___, 402 P.3d 1260, 1262 (2017). After a review of the record, we conclude the district court did not err in this regard.³

To the extent Hernandez argued failure to apply credits to his minimum terms violated his equal protection rights, he is not entitled to relief. Hernandez failed to demonstrate a violation of the Equal Protection Clause because he failed to show 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).

Next, Hernandez appeared to claim the NDOC improperly denied him the opportunity to earn work credits or program credits. Hernandez had no right to employment while in prison. See NRS 209.461(1)(b); *Collins v. Palczewski*, 841 F. Supp. 333, 336-37 (D. Nev. 1993) (recognizing a prisoner has no independent constitutional right to


³Hernandez also claimed failure to apply statutory credits toward his minimum terms is an ex post facto application of NRS 209.4465(8). However, Hernandez did not allege that he committed his crime before the effective date of NRS 209.4465. See 1997 Nev. Stat., ch. 641, § 4, at 3175. Therefore, we conclude the district court properly concluded Hernandez was not entitled to relief. See *Weaver v. Graham*, 450 U.S. 24, 28-29 (1981).

employment and the Nevada statutes do not mandate employment). Hernandez also did not have a right to attend the prison's educational programs. See NRS 209.387; NRS 209.389(4). Therefore, Hernandez cannot demonstrate that lack of employment or program attendance and the resulting lack of opportunity to earn statutory credits violated any protected right.⁴ See NRS 209.4465(2) (explaining the Director of the NDOC has the discretion to award credits for diligence in labor or study and that an offender earns additional credits for the completion of certain educational programs).

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁴On appeal, Hernandez argues he has earned work credits since 2012, but the NDOC has failed to apply those credits against his sentence. Hernandez did not raise this claim in his petition before the district court and we decline to consider it in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. Linda Marie Bell, Chief Judge
Esteban Hernandez
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk