

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS A. SMITH,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 75697-COA

FILED

NOV 06 2018

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

ORDER OF AFFIRMANCE


Nicholas A. Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 7, 2017.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

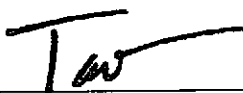
Smith claimed he was entitled to the application of statutory credits toward his minimum sentences pursuant to NRS 209.4465(7)(b). Smith's claim lacked merit. NRS 209.4465(7) begins, "[e]xcept as otherwise provided in subsection[] 8," and NRS 209.4465(8)(d) specifically excludes offenders convicted of category B felonies from having credit applied to their minimum term. Smith was sentenced for a category B felony, see NRS 200.481(1)(e)(1), and the offense was committed after NRS 209.4465(8)'s effective date of July 1, 2007. Smith is therefore not entitled to the application of credits toward his minimum sentence, and the exclusion does not violate the Ex Post Facto Clause. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981) (holding a statute violates the Ex Post Facto Clause only when it


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

is applied to events that occurred prior to its enactment). Accordingly, we conclude the district court did not err by denying Smith's petition, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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

²To the extent Smith appears to argue his due process rights were violated because the application of statutory credits was not explained to him during the plea bargaining process or during sentencing, this claim was not raised below, and we decline to consider it for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).