

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MISEAL ARCADIA,
Appellant,
vs.
JO GENTRY, WARDEN,
Respondent.

No. 73671

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Miseal Arcadia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 27, 2016.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

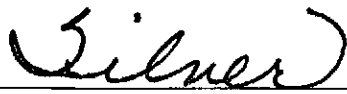
Arcadia claimed the Nevada Department of Corrections (NDOC) is not applying statutory credits to his minimum sentence pursuant to NRS 209.4465(7)(b). The district court found, and Arcadia conceded, that he has already had a parole hearing on his sole sentence. Because a parole hearing was the only relief available to him and no statutory authority or case law permits a retroactive grant of parole, *see Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), Arcadia's claim is moot, *see Johnson v. Dir., Nev. Dep't. of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989). We therefore conclude the district court did not err by denying Arcadia's petition as moot.

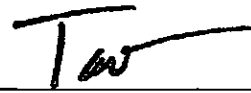
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


Moreover, as a separate and independent ground to deny relief, Arcadia's claim lacked merit. NRS 209.4465(7)(b) allowed for the application of statutory credits to minimum sentences only where the offender was not "sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." 2003 Nev. Stat., ch. 426, § 8, 2578. Arcadia was convicted of and sentenced pursuant to a statute that provided for "eligibility for parole beginning when a minimum of 10 years has been served." 2003 Nev. Stat., ch. 470, § 4, at 2945; NRS 200.030(5)(b). Accordingly, Arcadia was not entitled to the application of statutory credits to his minimum sentence.

Arcadia contends in his informal brief on appeal that NDOC is also failing to credit him the 1,277 days of time served reflected in his second amended judgment of conviction. Because this is new argument not raised below, we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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