

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AUCENCID ALVAREZ-CASTRO,  
Appellant,  
vs.  
JAMES DZURENDA, WARDEN,  
Respondent.

No. 74392

**FILED**

JUL 17 2018

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

*ORDER OF AFFIRMANCE*

Aucencid Alvarez-Castro appeals from an order of the district court denying the postconviction petition for a writ a habeas corpus filed on July 13, 2017.<sup>1</sup> First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition, Alvarez-Castro claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum term. The district court denied the petition because Alvarez-Castro is serving a prison term for trafficking in a controlled substance and unlawful sale of a controlled substance, both category B felonies, *see* NRS 453.3385(1)(b); NRS 453.321(2), and he committed his crimes in 2013. For those reasons the district court found the NDOC may only apply Alvarez-Castro's statutory credits toward his maximum terms pursuant to NRS 209.4465(8)(d). Given these circumstances, we conclude the district court did not err by denying this claim.

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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).

Alvarez-Castro also claimed the failure to apply his statutory credits toward his minimum term was a violation of the Equal Protection Clause. Alvarez-Castro failed to demonstrate a violation of the Equal Protection Clause because he failed to demonstrate he was similarly situated to those whose sentences did not fall within NRS 209.4465(8)(d), 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 116, 173 (2000) (discussing levels of review). Therefore, the district court did not err by denying this claim.

Finally, Alvarez-Castro claimed the failure to apply his statutory credits toward his minimum term violated the Ex Post Facto Clause. This claim lacked merit. A requirement for an Ex Post Facto Clause violation is that the statute applies to events occurring before it was enacted. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). NRS 209.4465(8) was enacted six years before Alvarez-Castro’s crimes, *see* 2007 Nev. Stat., ch. 525, § 5, at 3177. Therefore, the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
Aucencid Alvarez-Castro  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk