

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER BERNARD BAYOT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75442-COA

**FILED**

JAN 23 2019

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

*ORDER OF AFFIRMANCE*

Alexander Bernard Bayot appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 25, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Bayot challenged the Nevada Department of Corrections' application of NRS 209.4465(8)(d) to preclude applying Bayot's statutory credits to his minimum sentence. The district court correctly concluded Bayot could have raised this claim in his previous petition challenging the computation of his minimum sentence, *see Bayot v. State*, Docket No. 71366 (Order of Affirmance, March 23, 2017), and further concluded the failure to do so was an abuse of the writ. *See* NRS 34.810(2). Bayot's petition was therefore procedurally barred absent a demonstration of good cause and prejudice. *See* NRS 34.810(3).

Bayot appeared to claim he had good cause to overcome the procedural bar because his argument was not available until this court

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

pointed it out to him in the March 2017 order. To demonstrate good cause, Bayot had to demonstrate that the legal basis for his claim was not reasonably available to be raised in the prior petition. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). As the law relied upon in this court's previous order was not new, Bayot failed to demonstrate it was not reasonably available for his previous petition. Bayot thus failed to demonstrate good cause.

Bayot also could not demonstrate prejudice as his claim lacked merit. NRS 209.4465(7), which allows for the application of credits to minimum sentences, begins, "Except as otherwise provided in subsection[ ] 8," and NRS 209.4465(8)(d) specifically excludes the application of statutory credits to the minimum terms of sentences arising out of category B felonies. Bayot's sentences were for category B felonies, see NRS 207.010(1)(a); *Doolin v. State*, 134 Nev., Adv. Op. 98, \_\_\_ P.3d \_\_\_ (Nev. Ct. App. 2018), for offenses committed after NRS 209.4465(8)'s effective date. Bayot is therefore not entitled to the application of credits to his minimum sentences.

For the foregoing reasons, we conclude the district court did not err by denying Bayot's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

<sup>2</sup>The Honorable Michael L. Douglas did not participate in the decision in this matter.

cc: Hon. Eric Johnson, District Judge  
Alexander Bernard Bayot  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk