

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JAMES HOWARD,  
Appellant,  
vs.  
PERRY RUSSELL, WARDEN,  
Respondent.

No. 75562-COA

**FILED**

JAN 25 2019

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

*ORDER OF AFFIRMANCE*

Michael James Howard appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 6, 2018.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

Howard claimed the Nevada Department of Corrections is not applying statutory credits to his minimum sentence pursuant to NRS 209.4465(7)(b). Howard's claim lacked merit. NRS 209.4465(7) begins, "Except as otherwise provided in subsection[ ] 8," and NRS 209.4465(8)(d) specifically excludes the application of statutory credits to the minimum term of a sentence arising out of a category B felony. Howard's sentence was for a category B felony, see NRS 207.010(1)(a); *Doolin v. State*, 134 Nev., Adv. Op. 98, \_\_\_ P.3d \_\_\_ (Ct. App. 2018), for offenses committed after NRS 209.4465(8)'s effective date. Howard is therefore not entitled to the application of credits to his minimum sentence, and we conclude the district court did not err by denying this claim.

---


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


Howard contends the district court failed to afford him an opportunity to respond to the State's answer. Because the State did not seek to dismiss Howard's petition, Howard was not entitled to file a response. See NRS 34.750(4), (5). We therefore conclude Howard is not entitled to relief on this ground.

Finally, to the extent Howard contends the failure to apply statutory credits to his minimum sentence violates the Equal Protection Clause, he failed to raise this claim in the district court in the first instance, and we thus decline to consider it on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. James Todd Russell, District Judge  
Michael James Howard  
Attorney General/Las Vegas  
Attorney General/Carson City  
Carson City Clerk