

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMIAN DOMINGUEZ,
Appellant,
vs.
JO GENTRY, WARDEN,
Respondent.

No. 74798-COA

FILED

JAN 31 2019

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

ORDER OF AFFIRMANCE

Demian Dominguez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 1, 2016.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In his petition, Dominguez first claimed the Nevada Department of Corrections has not been applying his statutory credits toward his minimum term for the deadly weapon enhancement portion of his sentence for robbery with the use of a deadly weapon. The district court concluded Dominguez was not entitled to credits toward his minimum parole eligibility because he was serving a sentence pursuant to a statute that requires a minimum term that must be served before parole eligibility.

Dominguez is serving concurrent sentences for murder with the use of a deadly weapon and robbery with the use of a deadly weapon for conduct that occurred in January of 2007. Because Dominguez is serving two concurrent sentences, his eligibility for parole from either of the

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


sentences is “based on the sentence which requires the longest period before [he] is eligible for parole.” NRS 213.1213(1). The sentence for murder requires the longest period before Dominguez is eligible for parole—20 years. See NRS 200.030(4)(b)(2). Dominguez therefore is not eligible for parole from the concurrent sentence until he has served the minimum term on the sentence he received for the murder conviction. As to that sentence, the sentencing statute expressly required Dominguez to serve a minimum of 20 years before he is eligible for parole. See *id.* Therefore, pursuant to the exception set forth in NRS 209.4465(7)(b) (1997), and pursuant to NRS 213.1213(1), the credits Dominguez earns under NRS 209.4465 cannot be applied to his parole eligibility on the concurrent sentences he is serving. See *Williams v. State Dep’t of Corr.*, 133 Nev. ___, ___, 402 P.3d 1260, 1262 (2017). Therefore, we conclude the district court did not err by denying this claim.


Second, Dominguez claimed the failure to apply statutory credits toward his minimum term was a violation of the Equal Protection Clause. Dominguez 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(7)(b)’s exception, 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 right to parole.”); *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000) (discussing levels of review). Therefore, the district court did not err by denying this claim.

Finally, Dominguez claimed NDOC was applying the 2007 amendments to NRS 209.4465 to deny him credits toward his minimum

term. He claimed this violated the Ex Post Facto Clause. Dominguez' claim lacked merit because Dominguez committed his crimes prior to the amendments to NRS 209.4465 going into effect and, therefore, they are not being applied to him. Accordingly, the district court did not err by denying this claim.

Having concluded Dominguez' claims lack merit, we
ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, Chief Judge
Demian Dominguez
Attorney General/Las Vegas
Eighth District Court Clerk