

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RANDY SMITH,
Appellant,
vs.
THE STATE OF NEVADA; AND JO
GENTRY, WARDEN,
Respondents.

No. 75723-COA

FILED

FEB 13 2019

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

ORDER OF AFFIRMANCE

Randy Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 29, 2017.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Smith claims the district court erred by denying his claim the Nevada Department of Corrections improperly declined to apply his statutory credits to the minimum term of his sentence. He also claims this failure violated the Ex Post Facto and the Equal Protection Clauses. The district court denied these claims as moot because Smith has already appeared before the parole board on his sentence. Further, the district court concluded Smith's claim lacked merit because Smith was convicted pursuant to a statute that specified a minimum term Smith had to serve before he was eligible for parole. See NRS 200.030(5)(a).

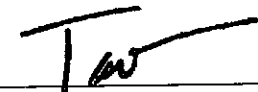
Because a parole hearing would be the only relief available and no statutory authority or case law permits a retroactive grant of parole, see

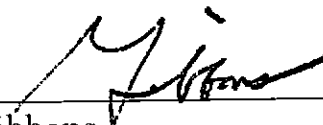
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989), we conclude the district court correctly found Smith's claim was moot. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989). Further, the district court correctly determined Smith's claim lacked merit. *See Williams v. State Dep't of Corr.*, 133 Nev. ___, ___, 402 P.3d 1260, 1262 (2017). Smith also failed to demonstrate a violation of the Ex Post Facto or Equal Protection Clauses. *See Weaver v. Graham*, 450 U.S. 24, 28-29 (1981); *Vickers v. Dzurenda*, 134 Nev. Adv. Op. 91 *8, ___ P.3d ___, ___ (Ct. App. 2018). Therefore, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

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