

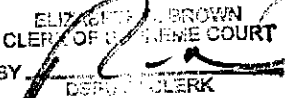
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIK PROVENCAL,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 75420-COA

FILED

MAR 14 2019

ELIZABETH L. BROWN
CLERK OF DISTRICT COURT
BY 
DISTRICT CLERK

ORDER OF AFFIRMANCE

Erik Provencal appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on December 26, 2017.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.


In his petition, Provencal claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits to the minimum term of his sentence. The district court found Provencal was not entitled to relief because he is currently serving a prison sentence for driving and/or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or alcohol resulting in death, a category B felony, *see* NRS 484C.430(1), and he committed this offense in 2015. Based on these findings, the district court concluded NDOC may only apply Provencal's credits toward his maximum term pursuant to NRS

¹This 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).

209.4465(8)(d). Given these circumstances, we conclude the district court did not err by denying this claim.²

Provencal also claimed the failure of NDOC to apply his credits toward his minimum term violated the Ex Post Facto clause. We conclude Provencal failed to demonstrate a violation because NRS 209.4465(7)(b) and NRS 209.4465(8) were in effect at the time he committed his crime and, therefore, were properly applied to him. *See Weaver v. Graham*, 450 U.S. 24, 28-29 (1981). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Erik Provencal
Attorney General/Carson City
Carson City Clerk

²Further, we note Provencal was not entitled to have statutory credits applied to his minimum sentence pursuant to NRS 209.4465(8)(c).