

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH ALIANO,
Appellant,
vs.
PERRY RUSSELL, WARDEN,
Respondent.

No. 76236-COA

FILED

APR 05 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Aliano appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 20, 2018.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition, Aliano claimed the Nevada Department of Corrections was not applying the statutory credits he earned to his minimum sentences as required by NRS 209.4465(7)(b). The district court found that Aliano was not entitled to have statutory credits applied to his minimum sentences because his sentence for battery with the use of a deadly weapon had been discharged and his sentence for assault with a deadly weapon fell within the restrictions imposed by NRS 209.4465(8). We conclude the district court did not err in this regard.² See NRS 209.4465(8)(a) & (d); *Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989).

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

²Aliano's crimes were category B felonies and were committed in 2013. See NRS 200.471(2)(b); NRS 200.481(2)(e)(1).


On appeal, Aliano claims the district court erred by referring him to the Director of the Department of Corrections for the forfeiture of credits. He argues that he is not a "frequent filer" or a "vexatious litigant" and a referral for forfeiture of credits should be reserved for those who repeatedly raise the same issue. And he asserts that he would have voluntarily dismissed his petition if he had known his claim was meritless.


The district court found Aliano's petition was frivolous because his claims lacked merit based on the law that existed when he filed the petition and he did not present a reasonable argument for a change in the existing law or its interpretation. The district court's factual findings are supported by the record.

While recognizing that there may be circumstances where it would be inappropriate to refer a person for the forfeiture of credits, we conclude the district court did not clearly abuse its discretion in this instance. See NRS 209.4465(8); NRS 209.451(1)(d)(2); see also *Hosier v. State*, 121 Nev. 409, 412, 117 P.3d 212, 214 (2005) (discussing similar circumstances in which the Nevada Supreme Court might refer an inmate under NRS 209.451(1)(d) when he or she files a frivolous original writ petition). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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