


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS ALBERTO ZARATE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 76569-COA

FILED

APR 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Carlos Alberto Zarate appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 31, 2018.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Zarate claimed the Nevada Department of Corrections improperly declined to apply his statutory credits toward his minimum sentence. The district court found Zarate is serving a sentence for trafficking in a controlled substance, a category B felony, *see* NRS 453.3385(1)(b), committed in 2017, and therefore, was not entitled to have credits deducted from his minimum sentence. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim. *See* NRS 209.4465(8)(d). Further, Zarate was convicted of a crime that required a minimum term be served before parole eligibility, *see* NRS 453.3405(1), and therefore, was also not entitled

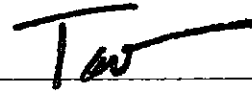
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

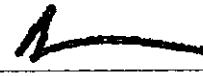
to have his statutory credits applied toward his minimum term under NRS 209.4465(7)(b).

To the extent Zarate claimed the failure to apply the credits toward his minimum sentence was an ex post facto violation, this claim lacked merit. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Carlos Alberto Zarate
Attorney General/Las Vegas
Eighth District Court Clerk

²To the extent Zarate claimed the failure to apply statutory credits toward his minimum term violated the Equal Protection Clause, Zarate did not raise this claim in his petition below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

