

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KARISMA GARCIA,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN; JAMES  
DZURENDA, DIRECTOR NDOC;  
DWAYNE DEAL, OMD; AND THE  
HONORABLE BRIAN SANDOVAL,  
GOVERNOR; AND THE STATE OF  
NEVADA,  
Respondents.

No. 76594-COA

FILED

MAY 15 2019

ELIZABETH A. BROWN  
CLERK OF THE COURT  
BY: *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Karisma Garcia appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 7, 2018.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition, Garcia 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 denied Garcia's petition after finding he had been convicted of a category B felony, he committed his felony after NRS 209.4465 was amended in 2007, and NRS 209.4465(8)(d) specifically excludes the application of statutory credits to the minimum sentences of category B felons. We conclude the district court did not err in this regard.<sup>2</sup>

On appeal, Garcia claims the district court erred by referring him to the Director of the Department of Corrections for the forfeiture of

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

<sup>2</sup>Garcia was convicted of robbery for a crime he committed in 2012. See NRS 200.380(2).

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credits. He argues that he received incorrect advice from the inmate who assisted him with his petition. He asserts that he filed a motion to dismiss the petition before the district court entered its order denying his petition and referring him for forfeiture of credits. And he seeks an order dismissing his petition in its entirety and directing the Director to disregard the referral for forfeiture of credits.

The record demonstrates that the district court entered its order denying the petition before Garcia filed his motion to dismiss the petition. The district court found that Garcia'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  
Karisma Garcia  
Attorney General/Carson City  
Carson City Clerk