

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUSTAVO ISAAC DELEON,
Appellant,
vs.
NDOC, DIRECTOR JAMES
DZURENDA; AND THE STATE OF
NEVADA,
Respondents.

No. 77014-COA

FILED

MAY 21 2019

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

ORDER OF AFFIRMANCE

Gustavo Isaac Deleon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 15, 2018.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Deleon claims the district court erred by denying his claim the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum terms. The district court found Deleon had been convicted of two counts of trafficking in a controlled substance, a category B felony, *see* NRS 453.3385(1)(b), committed in 2016, and therefore, he was not entitled to have his statutory credits applied to his minimum terms. Substantial evidence supports the district court's finding. *See* NRS 209.4465(8)(d). Further, Deleon was not entitled to have credits applied to his minimum terms because he was sentenced pursuant to a statute that required a minimum term be served before he was eligible


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


for parole. See NRS 209.4465(7)(b); NRS 453.3405(1). Therefore, we conclude the district court did not err by denying this claim.


Deleon also claims the district court erred by denying his claim NDOC's failure to apply credits toward his minimum terms was an ex post facto violation. This claim lacked merit because Deleon committed his crime after the effective date of the 2007 amendments to NRS 209.4465. See *Weaver v. Graham*, 450 U.S. 24, 29 (1981). Therefore, we conclude the district court did not err by denying this claim.

To the extent Deleon argues his equal protection rights were violated and NRS 209.4465 is ambiguous and vague, these claims were not raised below, and we decline to consider them for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Gustavo Isaac Deleon
Attorney General/Las Vegas
Eighth District Court Clerk