

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BARRY CHRISTOPHER ROWE,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND JO GENTRY,
WARDEN, S.D.C.C.,
Respondents.

No. 77430-COA

FILED

JUN 19 2019

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

ORDER OF AFFIRMANCE

Barry Christopher Rowe appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

First, Rowe argued the Nevada Department of Corrections (NDOC) improperly calculated the minimum terms he was to serve for his conviction of second-degree murder with the use of a deadly weapon. At the time Rowe committed his crime, the minimum sentence for second-degree murder was 10 years and the deadly-weapon enhancement was an equal and consecutive term, *see* 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165); 1995 Nev. Stat., ch. 443, § 44, at 1181-82 (NRS 200.030), and the sentencing court imposed a sentence consistent with those statutes. The district court found NDOC's documents demonstrated it was complying

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

with the sentence imposed by the sentencing court. The record supports the district court's findings. To the extent Rowe contended NDOC's calculation of his minimum terms caused previous parole hearings to be inaccurately scheduled, Rowe was not entitled to relief because no statutory authority or case law permits a retroactive grant of parole. *See Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989). And to the extent Rowe alleged NDOC's actions constituted a separation of powers violation, his claim lacked merit. *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) ("The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch."). Therefore, we conclude the district court properly denied this claim.

Second, Rowe argued NDOC improperly refused to apply statutory credits toward his minimum parole eligibility date. Rowe was sentenced pursuant to statutes that specified a minimum term that must be served before a defendant becomes eligible for parole. *See* 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165); 1995 Nev. Stat., ch. 443, § 44, at 1181-82 (NRS 200.030). Because the relevant statutes specified a minimum sentence that Rowe must serve prior to parole eligibility for his remaining term for the deadly-weapon enhancement, the district court properly found, pursuant to NRS 209.446(6)(b), NDOC may not apply statutory credits to reduce Rowe's minimum term for that sentence. *Cf. Williams v. State Dep't*

of *Corr.*, 133 Nev. 594, 596-97, 402 P.3d 1260, 1262 (2017). Therefore, the district court did not err by denying this claim.²

Third, Rowe argued the manner in which his statutory credits are applied to his maximum term should be altered. Rowe contended he is serving life terms and it is improper that his statutory credits do not actually reduce such a sentence. Rowe's claim lacked merit. The Nevada Supreme Court has already concluded "the legislature did not intend good time credit to be applied to a sentence of life in prison." *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995). The record demonstrated NDOC is appropriately recording Rowe's good-time credits, but declining to apply those credits in such a way that would work to reduce Rowe's maximum term. Therefore, Rowe is not entitled to relief for this claim.³

Fourth, Rowe claimed NDOC's application of credits violated the Equal Protection Clause because inmates do not receive credits in a uniform manner and he should receive additional credits pursuant to NRS 209.4465. However, this court has addressed a similar claim and found it

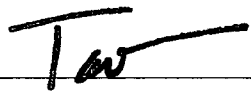
²To the extent Rowe argued he was entitled to additional credits for his sentence for the primary offense, his claim lacked merit. Rowe was granted parole for that sentence and "no relief can be afforded where the offender has already expired the sentence or appeared before the parole board on the sentence." *Id.* at 600 n.7, 402 P.3d at 1265 n.7 (internal citation omitted).


³The district court denied this claim, but appeared to find that NDOC has applied good-time credits toward Rowe's maximum term. To the extent the district court found such application of credits worked to reduce Rowe's life sentence, such a finding was error. *See id.* Nevertheless, because the district court properly denied relief, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

to lack merit. *See Vickers v. Dzurenda*, 134 Nev., Adv. Op. 91 *3-8, 433 P.3d 306, 308-10 (Ct. App. 2018). In addition, because Rowe committed his offense in 1995, NRS 209.446 controls the calculation of his good-time credits. Therefore, the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Barry Christopher Rowe
Attorney General/Las Vegas
Eighth District Court Clerk