

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN PAUL FLAGG,
Appellant,
vs.
HAROLD WICKHAM, WARDEN,
WARM SPRINGS CORRECTIONAL
CENTER,
Respondent.

No. 70886

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Jonathan Paul Flagg appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

Flagg argues the district court erred in denying his May 4, 2016, petition. In his petition, Caldwell first claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his credits toward his minimum term. The district court concluded Flagg was not entitled to relief because he was convicted of a category B felony, committed the offense in 2011, and for those reasons, the NDOC may only apply Flagg's credits toward his maximum terms pursuant to NRS

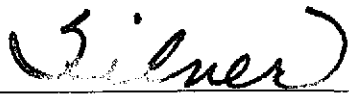
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

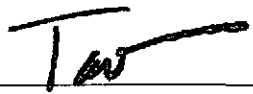
209.4465(8).² Given these circumstances, we conclude the district court did not err in denying this claim.

Next, Flagg argues the district court erred by denying his petition without allowing him to oppose the State's motion to dismiss. This claim lacks merit. The State filed its motion to dismiss Flagg's petition on June 10, 2010. Pursuant to NRS 34.750(4), Flagg had 15 days after service of the State's motion within which to file his response, yet he did not file an opposition within that time frame. Accordingly, the district court did not err in dismissing Flagg's petition.

Finally, Flagg argues failure to apply his credits toward his minimum term violates his equal protection rights and is an ex post facto violation. However, Flagg did not raise these claims in his petition before the district court and we decline to consider them in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²The record demonstrates Flagg was convicted of child abuse and neglect causing substantial bodily or mental harm. See NRS 200.508(1)(a)(2).

cc: Hon. James E. Wilson, District Judge
Jonathan Paul Flagg
Attorney General/Carson City
Carson City Clerk