

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY CALDWELL,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 70982

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

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

Caldwell argues the district court erred in denying his May 12, 2016, petition. In his petition, Caldwell first claimed the Nevada Department of Corrections (NDOC) has improperly declined to apply his good-time credits toward his minimum terms. The district court concluded Caldwell was not entitled to relief because Caldwell was convicted of category B felonies, committed the offenses in 2013, and for those reasons, the NDOC may only apply Caldwell's credits toward his maximum terms pursuant to NRS 209.4465(8).² Given these

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

²The record demonstrates Caldwell was convicted of burglary and conspiracy to commit robbery, both category B felonies. See NRS 199.480(1); NRS 205.060(2).

circumstances, we conclude the district court did not err in denying this claim.


Second, Caldwell appeared to argue failure to apply credits toward his minimum terms violates his equal protection rights. Caldwell asserted certain inmates with convictions similar to his, but who committed their crimes prior to the 2007 amendments to NRS 209.4465, have credits applied toward their minimum terms and the disparate treatment of those inmates as compared to him violated his equal protection rights. *See* 1997 Nev. Stat., ch. 641, § 4, at 3175. “The Equal Protection Clause of the Fourteenth Amendment mandates that all persons similarly situated receive like treatment under the law.” *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). When a classification does not affect fundamental rights, the “legislation at issue will be upheld provided the challenged classification is rationally related to a legitimate governmental interest.” *Id.*

Here, Caldwell did not demonstrate he and the other inmates were similarly situated given their differing offense dates and different statutes governing application of credits during the different offense dates. Further, Caldwell did not demonstrate he was a member of a suspect class, or that this issue involved the type of fundamental rights requiring strict scrutiny review. *See id.*; *see also Graziano v. Pataki*, 689 F.3d 110, 117 (2d Cir. 2012) (recognizing prisoners, whether in the aggregate or specified by offense, are not a suspect class and rational basis test will apply); *Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) (recognizing prisoners are not a suspect class and applying rational basis test). And Caldwell did not demonstrate there is no rational basis for applying credits in a different manner based upon offenses and offense date. Therefore, we conclude the district court did not err in denying this claim.


Next, Caldwell argues his terms have been improperly aggregated, NRS 209.4465(8) violates separation of powers principles and bars against cruel and unusual punishment, the sentencing court improperly ordered him to pay restitution, and the NDOC credit history report shows it has improperly calculated his flat-time and good-time credits against his total sentence. Caldwell did not raise these claims in the district court and we decline to consider them in the first instance on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Finally, Caldwell appears to argue the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Jeremy Caldwell
Attorney General/Carson City
Carson City Clerk