

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY WAYNE MORGAN,  
Appellant,  
vs.  
JAMES E. DZURENDA, DIRECTOR;  
NDOC; AND HAROLD WICKHAM,  
WARDEN, WSCC,  
Respondents.

No. 72038

FILED

OCT 11 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Timothy Wayne Morgan appeals from an order of the district court dismissing the postconviction petition for a writ of habeas corpus he filed on July 1, 2016.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition, Morgan claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum term. The district court found Morgan was not entitled to relief because Morgan is currently serving a prison term for second-degree murder with the use of a deadly weapon, a category A felony, see NRS 200.030(5), committed in 2010, and, for those reasons, the NDOC may only apply Morgan's statutory credits toward his maximum term

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


pursuant to NRS 209.4465(8)(d). Given these circumstances, we conclude the district court did not err by denying this claim.

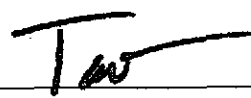
Morgan also claimed failure to apply credits toward his minimum terms violated his equal protection rights. Morgan asserted certain inmates with convictions similar to him, but who committed their crimes prior to the 2007 amendments to NRS 209.4465, have credits applied toward their minimum terms and the disparate treatment of those inmates as compared to him violated his equal protection rights. "The Equal Protection Clause of the Fourth 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, Morgan 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, Morgan did not demonstrate he was a member of a suspect class, or this issue involved the type of fundamental rights requiring strict scrutiny review. *See id*; *see also Graziano v. Pataki*, 689 F.2d 110, 117 (2nd Cir. 2012) (recognizing prisoners, whether in the aggregate or specified by offense, are not a suspect class and rational basis test will apply). And Morgan did not demonstrate there was no rational basis for applying credits in a different manner based upon offenses and offense date. Therefore,

Morgan failed to demonstrate an equal protection violation.

Having concluded Morgan is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James Todd Russell, District Judge  
Timothy Wayne Morgan  
Attorney General/Carson City  
Attorney General/Las Vegas  
Carson City Clerk