

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRACY NICOLE SUMMERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71671

FILED

OCT 12 2017

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

ORDER OF AFFIRMANCE

Tracy Nicole Summers appeals from an order of the district court denying his June 1, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time he has served.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

Summers claimed the Nevada Department of Corrections (NDOC) was failing to apply statutory good-time credits to his parole eligibility pursuant to NRS 209.4465. Summers had a parole hearing prior to the filing of the instant petition. Since a parole hearing would have been the only relief available and no statutory authority or caselaw permits a retroactive grant of parole, *see Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), Summers' claim was moot. *See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989).

Moreover, his claim lacked merit. NRS 209.4465(7) begins, "Except as otherwise provided in subsection[ ] 8," and NRS 209.4465(8)(d) specifically excludes offenders convicted of category B felonies from

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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).

deducting statutory credits from their minimum sentences. Summers was convicted of a category B felony, *see* NRS 484C.410(1) (formerly NRS 484.3792(2)), for an offense committed after NRS 209.4465(8)'s effective date. Accordingly, he was not entitled to the application of credits to his parole eligibility.

To the extent Summers claimed NDOC added days to his time because he was disabled and could not work, his claim lacked merit. NDOC did not credit Summers for months he did not work. *See* NRS 209.4465(2) (requiring prisoners to actually work to earn credits). And this lack of work credits did not increase Summers' maximum sentence imposed. Accordingly, we conclude the district court did not err in denying Summers' petition, and we

ORDER the judgment of the district court AFFIRMED.



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. James Todd Russell, District Judge  
Tracy Nicole Summers  
Attorney General/Carson City  
Carson City Clerk