IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW DOUGLAS BAKER,
Appellant,
vs.
DWAYNE DEAL, ADMINISTRATOR,
OFFENDER MANAGEMENT
DIVISION, STATE OF NEVADA,
Respondent.

No. 71308

FILED

MAY 16 2017

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

ORDER OF AFFIRMANCE

Matthew Douglas Baker appeals from a district court order granting the State's motion to dismiss his June 6, 2016, postconviction petition for a writ of habeas corpus.[1] First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition, Baker claimed the Nevada Department of Corrections was not properly applying the credits he earned pursuant to NRS 209.4465(7)(b). The district court determined Baker was not entitled to relief and dismissed the petition.

First, Baker claims the district court erred by basing its decision on the current version of NRS 209.4465(7)(b) rather than the version that was in effect at the time of his crimes. NRS 209.4465(7)(b) provides, in relevant part, "credits earned pursuant to this section: . . . [a]pply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served

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

before a person becomes eligible for parole." This statutory language has not changed since the statute was enacted in 1997. *See* 1997 Nev. Stat., ch. 641, § 4, at 3175. Therefore, we conclude the district court did not err in this regard.

Second, Baker claims the district court erred by failing to follow the Nevada Supreme Court's rationale in an unpublished order. This claim lacks merit. Baker was not entitled to relief because he was sentenced under statutes that specified the minimum sentence that must be served before a defendant becomes eligible for parole. *See* NRS 200.030(4)(b)(2); NRS 200.320(1)(b); NRS 209.4465(7)(b). Therefore, we conclude the district court did not err in this regard.

Third, Baker claims the district court erred by failing to apply the statutory credits he had earned to his aggregated sentence pursuant to NRS 213.1212(2). NRS 213.1212(2) provides, "For purposes of determining parole eligibility, a prisoner whose sentences have been aggregated may earn credit pursuant to NRS 209.433 to 209.449, inclusive, which must be deducted from the minimum aggregate term of imprisonment *or* the maximum aggregate term of imprisonment, *as applicable*" (emphasis added). The application of credits in Baker's case is governed by NRS 209.4465(7), which states the credits must be deducted from the maximum term of imprisonment. Therefore, we conclude the district court did not err in this regard.

Finally, Baker claims the district court violated his right to equal protection by allowing the Nevada Department of Corrections to apply his statutory credits to his sentence differently than it applied the statutory credits to another individual's sentence. "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). Baker has not demonstrated that he and the other individual are similarly situated. Baker was sentenced under statutes which expressly state the number of years a person must serve before becoming eligible for parole, *see* NRS 200.030(4)(b)(2); NRS 200.320(1)(b), whereas the other individual was sentenced under a statute which specifies the minimum and maximum range of the prison sentence and does not state when the person will become eligible for parole, *see* NRS 193.330(1)(a)(1). Because Baker and the other individual are not similarly situated, we conclude the district court did not violate Baker's right to equal protection.

Having concluded Baker is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
       Matthew Douglas Baker
       Attorney General/Carson City
       Carson City Clerk