

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMARIAN A. CLEMONS,  
Appellant,  
vs.  
OFFENDER MANAGEMENT DIVISION  
STATE OF NEVADA,  
Respondent.

No. 71233

**FILED**

FEB 23 2017

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

*ORDER OF AFFIRMANCE*

Appellant Demarian A. Clemons appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.

In his May 16, 2016, petition, Clemons claimed the Nevada Department of Corrections (NDOC) had improperly computed his good-time credits and improperly denied him the opportunity to earn work or education credits. The district court concluded Clemons' claims lacked merit and denied the petition.

First, Clemons argues the district court erred in concluding the NDOC properly calculated his good-time credits. Clemons asserts he is entitled to application of credits towards both his minimum and maximum terms. However, offenders who have been convicted of category A or B felonies are not entitled to have credits applied towards their

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

eligibility for parole or their minimum terms. NRS 209.4465(8)(d). The district court concluded Clemons was not eligible for credit towards his minimum terms pursuant to NRS 209.4465(8)(d) due to the nature of his convictions.<sup>2</sup> The record supports the district court's conclusion. To the extent Clemons asserted the NDOC had failed to apply credits towards his maximum terms, the record demonstrates this assertion lacked merit. Accordingly, we conclude the district court did not err in denying this claim.

Second, Clemons argues the district court erred in denying his claim the NDOC had improperly denied him the opportunity to earn work or education credits. Clemons asserted he was not permitted to work or attend education courses due to poor health and he should be awarded credits because he is willing to perform those tasks. Clemons had no right to employment while in prison. *See* NRS 209.461(8); *Collins v. Palczewski*, 841 F. Supp. 333, 336-37 (D. Nev. 1993) (recognizing a prisoner has no independent constitutional right to employment and the Nevada statutes do not mandate employment). Clemons also did not have a right to education while in prison. *See* NRS 209.387; NRS 209.389(4). Therefore, Clemons cannot demonstrate that lack of employment or education and the resulting lack of opportunity to earn statutory credits violated any

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<sup>2</sup>The record reveals Clemons was serving prison terms for three separate convictions involving category B felonies: a 2009 conviction for battery with the use of a deadly weapon resulting in substantial bodily harm, discharging a firearm at or into a structure, and felon in possession of a firearm; a 2009 conviction for discharge of a firearm in a structure; and a 2014 conviction for voluntary manslaughter with the use of a deadly weapon.

protected right or requires the NDOC to award him credits he is not able to earn.


Third, Clemons argues the district court erred by not entering a default judgment against the respondent. Clemons asserts the respondent defaulted by failing to file the opposition to his petition within 45 days. However, Clemons did not demonstrate the civil rules of procedure governing defaults or default judgments are applicable to postconviction petitions for a writ of habeas corpus. See NRS 34.780(1) (stating that the Nevada Rules of Civil Procedure apply to proceedings for postconviction petitions for a writ of habeas corpus to the extent they are not inconsistent with NRS Chapter 34). In addition, even assuming those procedures would apply to his petition, Clemons did not properly seek a default or default judgment before the district court, and therefore, he was not entitled to relief due to any failure by the respondent to promptly oppose his petition. See NRCP 55(a), (b)(2); *Epstein v. Epstein*, 113 Nev. 1401, 1404-05, 950 P.2d 771, 772-73 (1997). Therefore, Clemons is not entitled to relief for this claim.

Fourth, Clemons argues the district court erred by denying the petition outside of his presence. Clemons asserts he filed a request for transportation to the district court for a hearing concerning the petition and he was entitled to be present for that hearing. However, Clemons does not have an unlimited right to be present at every proceeding, see *Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011), and he “must show that he was prejudiced by the absence,” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the hearing at issue was limited to the district court

stating that the petition was denied and Clemons did not demonstrate he had a right to attend such a hearing. *Cf. Gebers v. State*, 118 Nev. 500, 506, 50 P.3d 1092, 1095 (2002) (concluding that defendant's rights were violated when he was not present at hearing where testimony and evidence were presented). Further, Clemons does not demonstrate the outcome of this matter would have been different had he been present because his petition lacked merit. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathy A. Hardcastle, Senior Judge  
DeMarian A. Clemons  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk