

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT MICHAEL FLUKER,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN,  
Respondent.

No. 71220

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Robert Michael Fluker appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.<sup>1</sup> First Judicial District Court, Carson City; James E. Wilson, Judge.

Fluker argues the district court erred in denying his July 6, 2016, petition. In his petition, Fluker 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 Fluker was not entitled to relief because Fluker was convicted of a category B felony, committed the offense in 2010, and for those reasons, the NDOC may only apply Fluker's good-time credits toward his maximum terms pursuant to NRS 209.4465(8).<sup>2</sup> Given these

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

<sup>2</sup>The record demonstrates Fluker was convicted of robbery, a category B felony. See NRS 200.380(2).

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


Second, Fluker argued failure to apply credits toward his minimum terms violates his equal protection rights. Fluker 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, Fluker 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, Fluker 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 Fluker 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.

Third, Fluker claimed failure to apply statutory credits toward his minimum term violates the Ex Post Facto Clause. The statutes in effect at the time Fluker committed his offense govern. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981); *Goldsworthy v. Hannifin*, 86 Nev. 252, 255, 468 P.2d 350, 352 (1970). The version of NRS 209.4465 in effect when Fluker committed the robbery did not permit statutory credits to apply toward Fluker's minimum term. *See* 2009 Nev. Stat., ch. 369, § 13, at 1887-88. Therefore, we conclude the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
Robert Michael Fluker  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk