

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS LEDESMA,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 71185

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Luis Ledesma appeals from the postconviction petition for a writ of habeas corpus he filed on June 20, 2016.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

First, Ledesma claims the district court erred by dismissing his petition without conducting an evidentiary hearing. In his petition, Ledesma claimed the Nevada Department of Corrections was not properly applying the credits he earned pursuant to NRS 209.4465 because it was not deducting the credits from his minimum prison term.

A petitioner is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008).

Ledesma's habeas claim is repelled by the record, which reveals he was convicted of three category B felonies for offenses he committed after 2007. Because these facts were dispositive of his claim


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


and demonstrate he was not entitled to relief, *see* NRS 209.4465(8)(d), the district court did not err by dismissing his petition without an evidentiary hearing.

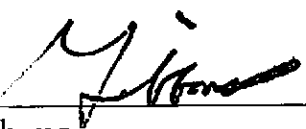
Second, Ledesma claims the district court's process for resolving his petition was fundamentally unfair because it did not place the matter on the calendar for a hearing, directed the State to provide a response, adopted the State's findings of fact verbatim, and did not give him an opportunity to respond to the State's proposed findings of fact and conclusions of law.

Ledesma has not demonstrated the postconviction proceeding was fundamentally unfair as he chose not to oppose the State's motion to dismiss his petition. *See* NRS 34.750(4). Even assuming he should have had the opportunity to review and respond to the State's proposed findings and conclusions, *see Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007), we conclude any error was harmless under the facts of this case, *see* NRS 178.598.

Having concluded Ledesma 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
Luis Ledesma
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk