


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB JAMES DAVIS,
Appellant,
vs.
PERRY RUSSELL, WARDEN,
Respondent.

No. 77092-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jacob James Davis appeals from a district court order denying the postconviction petition for a writ of habeas corpus that was filed on March 19, 2018. First Judicial District Court, Carson City; James Todd Russell, Judge.

Davis claims the district court erred by finding he is not entitled to have statutory credit applied to his minimum term pursuant to NRS 209.4465(8)(d) and denying his petition. Davis argues that because he was not sentenced to a term that requires him to serve a mandatory minimum sentence before being eligible for parole, he is entitled to have credit applied to his sentence pursuant to NRS 209.4465(7)(b). Davis is mistaken.

The district court found, Davis was convicted of second-degree kidnapping, a category B felony, *see* NRS 200.330, for a crime committed in 2016, which was after the effective date of NRS 209.4465(8). The district court concluded that because Davis was convicted of a category B felony, NRS 209.4465(8)(d) precluded the application of credit to his minimum term. The record supports the district court's finding and we conclude the district court properly determined NRS 209.4465(8)(d) precludes the application of statutory credit to his minimum term. Contrary to Davis'

19-34993


assertion, he is not entitled to have statutory credit applied to his minimum term pursuant to NRS 209.4465(7)(b), because that subsection only applies if the application of statutory credit to the minimum term is not precluded by NRS 209.4465(8). See NRS 209.4465(7).

Davis also claims the district court erred by summarily dismissing his petition without providing him an opportunity to file an opposition to a motion to dismiss. Davis' claim is belied by the record. The record demonstrates that, as ordered by the court, the respondent filed an answer to the petition, not a motion to dismiss. Davis subsequently filed a response to the answer, and the district court considered the petition, answer, and Davis' response prior to resolving the petition on its merits. Therefore, we conclude no relief is warranted.

Davis also claims precluding the application of credit to his minimum term violates both the Equal Protection and Due Process Clauses, and the interpretation of NRS 209.4465 should be affected by NRS 213.120. Davis did not raise these claims in his petition below, and we decline to address them for the first time on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

Having concluded Davis is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Jacob James Davis
Attorney General/Carson City
Carson City Clerk