


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT GORDON EANES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78045-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Gordon Eanes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 17, 2018. First Judicial District Court, Carson City; James Todd Russell, Judge.

Eanes does not challenge the district court decision to deny his petition. Instead, Eanes challenges the district court's decision to refer him for the forfeiture of statutory credits for filing a frivolous petition. Eanes argues he realized, after the State filed its answer to his petition, that he should not have filed his petition because it was frivolous. Eanes claims he filed a motion to voluntarily dismiss his petition, but he was not given an opportunity to timely file it because the district court filed its order denying the petition two days after the State filed its answer to his petition.


A district court may refer an offender for the forfeiture of credits when an offender includes a claim in civil action that is "not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law." NRS 209.451(1)(d)(2). The district court concluded Eanes' petition was based on "claims which are not warranted by existing law or by a reasonable argument for a change in

existing law or a change in the interpretation of existing law,” and that the petition was “frivolous and wholly without merit.”

While recognizing that there may be circumstances where it would be inappropriate to refer a prison inmate for the forfeiture of credits, we conclude the district court did not clearly abuse its discretion in this instance. *See* NRS 209.451(1)(d)(2); *see also Hosier v. State*, 121 Nev. 409, 412, 117 P.3d 212, 214 (2005) (discussing similar circumstances in which the Nevada Supreme Court might refer an inmate under NRS 209.451(1)(d) when he or she files a frivolous original writ petition). Further, because the State filed an answer to Eanes’ petition and not a motion to dismiss, he had no statutory right to respond to the State’s answer and the district court did not err by immediately denying Eanes’ petition. *See* NRS 34.740 (“The petition must be examined expeditiously by the judge or justice to whom it is assigned.”); NRS 34.750(4), (5). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Robert Gordon Eanes
Attorney General/Carson City
Carson City Clerk