

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS RODRIGO LUGO-LOPEZ,
Appellant,
vs.
JERRY HOWELL, WARDEN,
Respondent.

No. 78846-COA

FILED

DEC 27 2019

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

ORDER OF AFFIRMANCE

Jesus Rodrigo Lugo-Lopez appeals from a district court order denying his postconviction petition for a writ of habeas corpus filed on November 19, 2018. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Lugo-Lopez claims the district court erred by denying his claim that the Nevada Department of Corrections (NDOC) is erroneously applying NRS 209.4465(8)(d) to deny him the application of credit to his minimum sentence. Lugo-Lopez argues that NRS 209.4465(8)(d) is in conflict with the stated intent of NRS 209.4465 and, because NRS 209.4465(7)(b) does not preclude the application of credit to his minimum sentence, he should have all of his earned statutory credit applied to his minimum sentence.

Credit can only be applied to an offender's minimum sentence pursuant to NRS 209.4465(7)(b) if the application of the credit to the minimum sentence is not otherwise prohibited by NRS 209.4465(8) & (9). As relevant to this appeal, NRS 209.4465(8)(d) prohibits the application of

statutory credit to the minimum sentence for an offender's conviction of a category A or B felony.

The district court found Lugo-Lopez was convicted of, and is currently serving his sentence for, trafficking in a controlled substance, a category B felony, *see* NRS 453.3385(1)(b), that he committed in 2018, after the effective date of NRS 209.4465(8)(d). The district court concluded that pursuant to NRS 209.4465(8)(d) Lugo-Lopez was not entitled to have statutory credit applied to his minimum sentence. The record supports the district court's findings and we conclude the district court did not err by finding Lugo-Lopez is not entitled to have credit applied to his minimum sentence.

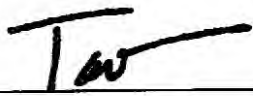
Lugo-Lopez also claims the district court erred by denying his claim that NDOC is applying NRS 209.4465(8)(d) to him in violation of the Ex Post Facto Clause. The district court concluded that, because Lugo-Lopez committed his offense after the effective date of NRS 209.4465(8)(d), application of that statute did not violate the Ex Post Facto Clause. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981). We conclude the district court did not err by denying this claim.

Finally, Lugo-Lopez claims the district court erred by denying his claim that applying NRS 209.4465(8)(d) to him to deny him the application of credit to his minimum sentence constitutes an equal protection violation. This court has addressed a similar claim and found it to lack merit. *See Vickers v. Dzurenda*, 134 Nev. 747, 751-52, 433 P.3d 304, 310 (Ct. App. 2018). Therefore, we conclude the district court did not err by denying this claim.

We conclude the district court did not err by denying Lugo-Lopez' petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Jesus Rodrigo Lugo-Lopez
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk