

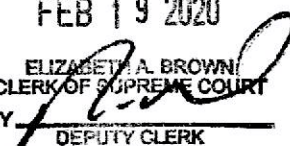
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES THEODORE SHARKEY,
Appellant,
vs.
NDOC DIRECTOR JAMES DZURENDA,
Respondent.

No. 79463-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Theodore Sharkey appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 12, 2019. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Sharkey claims the district court erred by denying his petition without first conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must allege specific facts that are not belied by the record and that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Below, Sharkey claimed that the Nevada Department of Corrections (NDOC) was not properly crediting him with 20 days of statutory good time credit or 10 days of work credit for each month he has been incarcerated, as is required under NRS 209.4465(1), (2). Sharkey appears to have also claimed that he was entitled to have 401 days of presentence credit applied to his sentence. Sharkey attached a copy of his credit history report to his petition. The State filed a response to Sharkey's petition and provided copies of Sharkey's inmate profile, credit history report, charging document, and judgment of conviction.


The district court found that the record demonstrated Sharkey was credited with 401 days of presentence credit. The district court also found that Sharkey was given statutory good time credit for each month he has been incarcerated, the credit has been applied to his maximum term, and Sharkey did not allege any specific errors with the application of credit to his maximum term. The district court further found that any claim regarding the application of his statutory good time credit to his minimum term was moot because Sharkey had already received a parole hearing on his sentence. *See Williams v. State Dep't of Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017). The district court also found that, even if his claim regarding the application of credit to his minimum term was not moot, Sharkey is not entitled to have his statutory good time credit applied to his minimum term pursuant to NRS 209.4465(8)(a) because he was convicted of battery constituting domestic violence for a criminal act committed in 2016. Finally, the district court found that Sharkey was not claiming that he was being denied credit for work he has actually performed, and the district court concluded Sharkey is not entitled to work credit under NRS 209.4465(2) for work that he does not actually perform. *See Vickers v. Dzurenda*, 134 Nev. 747, 748, 433 P.3d 306, 308 (Ct. App. 2018). The district court's findings are supported by the record. And, because Sharkey's claims were belied by the record, insufficiently pleaded, or would not have entitled him to relief, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Below, Sharkey also claimed that he is being denied the opportunity to earn work credit because NDOC is discriminating against him based on a disability. Specifically, he asserted that because of his

disability he is not being permitted to be housed in a lower-custody facility and he is also not being given the opportunity to participate in camp or employment programs associated with housing in a lower-custody facility. He argued that the failure to accommodate his disability violates the Americans with Disabilities Act and the Rehabilitation Act. Because this claim challenges Sharkey's conditions of confinement, a postconviction petition for a writ of habeas corpus was not the proper vehicle to raise this claim. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). We therefore affirm the district court's denial of this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
James Theodore Sharkey
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk