IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ARTHUR DIETZ,
Appellant,
vs.
JERRY HOWELL, WARDEN; AND
SOUTHERN DESERT CORRECTIONAL
CENTER,
Respondents.

No. 80330-COA

FILED

JUL 24 2020

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

ORDER OF AFFIRMANCE

John Arthur Dietz appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In his September 24, 2018, petition, Dietz first claimed the Nevada Department of Corrections (NDOC) erroneously failed to apply his statutory credits toward his minimum parole eligibility date for a crime committed in 2006. The district court concluded Dietz was not entitled to relief because he is currently serving a sentence for second-degree murder with the use of a deadly weapon and was sentenced for that conviction pursuant to statutes that specified a minimum sentence that must be served before a defendant becomes eligible for parole. *See* NRS 193.165(1) (1995); NRS 200.030(5)(b). Because the statutes specified a minimum sentence that must be served before Dietz becomes eligible for parole, NDOC may not apply statutory credits to reduce Dietz's minimum parole eligibility date. *See* NRS 209.4465(7)(b) (2003); *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). Based on the record concerning Dietz's statutory credits, the district court found NDOC

appropriately calculated his time served and properly applied Dietz's credits only toward his maximum terms. For those reasons, the district court denied the petition. Substantial evidence supports the district court's findings and we conclude the district court did not err by denying this claim.

Second, Dietz claimed the application of NRS 209.4465(7)(b) violates the Ex Post Facto Clause. Dietz's claim lacked merit. A requirement for an Ex Post Facto Clause violation is that the statute applies to events occurring before it was enacted. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). Because NRS 209.4465(7)(b) was enacted before Dietz committed his crime, its application does not violate the Ex Post Facto Clause. Therefore, the district court properly found Dietz was not entitled to relief.

Third, Dietz claimed he was entitled to additional work credits for times he was willing but unable to work. The district court found Dietz was not entitled to work credits for periods in which he did not work. We conclude the district court properly determined Dietz was not entitled to work credits for work he did not actually perform. *See* NRS 209.4465(2); *Vickers v. Dzurenda*, 134 Nev. 747, 748, 433 P.3d 306, 308 (Ct. App. 2018).

Fourth, Dietz appeared to claim that failure to apply credits to all inmates in a uniform manner violates the Equal Protection Clause. This court has addressed a similar claim and found it to lack merit. *See Vickers*, 134 Nev. at 751, 433 P.3d at 310. Therefore, the district court properly found Dietz was not entitled to relief.

Finally, Dietz appears to argue on appeal that the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03,

686 P.2d 222, 225 (1984). The district court concluded Dietz's claims did not meet that standard, and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing. Accordingly, Dietz is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
        John Arthur Dietz
        Attorney General/Carson City
        Attorney General/Las Vegas
        Eighth District Court Clerk