

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT VITO COMITO,
Appellant,
vs.
JERRY HOWELL, WARDEN; THE
STATE OF NEVADA; AND THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS,
Respondents.

No. 80054-COA

FILED

AUG 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Vito Comito 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 June 20, 2019, petition, Comito first claimed he was entitled to additional work credits for times he was willing to work but was unable to due to a disability. We conclude the district court properly determined Comito 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). Therefore, the district court properly denied this claim.

Second, Comito appeared to claim the Nevada Department of Corrections (NDOC) improperly reduced his good-time credits even though he had not committed any disciplinary violations. A petitioner is not entitled to relief for claims unsupported by factual allegations or belied by the record. *See Rippo v. State*, 134 Nev. 411, 426, 423 P.3d 1084, 1100 (2018). The credit history report for Comito's sentence demonstrated NDOC

did not remove good-time credits from his sentence. Thus, Comito's claim was belied by the record, and we conclude the district court did not err by denying this claim.

Third, Comito claimed that NDOC's 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 Comito was not entitled to relief.

Finally, Comito claimed NDOC failed to accommodate his disability, thus violating the Americans with Disabilities Act. However, this was a challenge to Comito's conditions of confinement, and a postconviction petition for a writ of habeas corpus was not the proper vehicle to raise such challenges. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Accordingly, the district court properly denied 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
Robert Vito Comito
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk