

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMMIE WAYNE ADAY, JR.,  
Appellant,  
vs.  
JERRY HOWELL, WARDEN,  
Respondent.

No. 80700-COA

**FILED**

SEP 11 2020

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

*ORDER OF AFFIRMANCE*

Jimmie Wayne Aday, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In his June 10, 2019, petition, Aday first claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum parole eligibility date and his maximum term. The district court found Aday was serving an aggregated term for category B felonies he committed after the effective date of NRS 209.4465(8). Because Aday was convicted of category B felonies, see NRS 202.360(1); NRS 453.3385(1)(b), committed after the effective date of NRS 209.4465(8)(d), he was precluded from the application of credits to his minimum parole eligibility date. The district court also found NDOC appropriately applied Aday's statutory credits toward his maximum term. These findings are supported by the record. We therefore conclude the district court did not err by denying this claim.<sup>1</sup>

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<sup>1</sup>Aday also appeared to claim he was entitled to application of statutory credits toward his minimum parole eligibility dates for his

Second, Aday claimed the application of NRS 209.4465(8) violates the Ex Post Facto Clause. 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(8) was enacted before Aday committed his crime, its application does not violate the Ex Post Facto Clause. Therefore, the district court properly found Aday was not entitled to relief.

Third, Aday claimed he was entitled to work and meritorious credits because he has made every possible effort to participate in educational, rehabilitation, and work programs. We conclude the district court properly determined Aday was not entitled to work, rehabilitation, and meritorious credits where he did not actually work or participate in programs of rehabilitation or programs to earn meritorious credits. See NRS 209.4465(2); *Vickers v. Dzurenda*, 134 Nev. 747, 748, 433 P.3d 306, 308 (Ct. App. 2018).

Fourth, Aday 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*,

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convictions of embezzlement, possession of documents or personal identifying information, possession of credit or debit card without cardholders consent, and possession of a controlled substance. However, the documents in the record provided by NDOC show Aday had discharged his sentences for his prior convictions and he was serving an aggregated term for his convictions of trafficking in a controlled substance and ownership or possession of a firearm by a prohibited person. Therefore, Aday's challenge to the computation of his prior sentences was moot. See *Williams v. State Dep't of Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017) (“[N]o relief can be afforded where the offender has already expired the sentence or appeared before the parole board on the sentence.” (internal citation omitted)).

134 Nev. at 751, 433 P.3d at 310. Therefore, the district court properly found Aday was not entitled to relief.

Fifth, Aday argues 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 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 Aday'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, Aday is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge  
Jimmie Wayne Aday, Jr.  
Attorney General/Las Vegas  
Eighth District Court Clerk