

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH LEE WEBSTER,  
Appellant,  
vs.  
THE STATE OF NEVADA; JERRY  
HOWELL, WARDEN; OMD  
(OFFENDER MANAGEMENT DIV.  
DIR.); AND NDOC,  
Respondents.

No. 80674-COA

**FILED**

OCT 28 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joseph Lee Webster appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 23, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Webster claimed he is entitled to the application of statutory credits to his minimum sentence pursuant to NRS 209.4465(7)(b). Webster's controlling sentence was the result of a conviction for second-degree murder with the use of a deadly weapon committed in 2006. At the time Webster committed his crimes, NRS 209.4465(7)(b) allowed for the application of statutory credits to minimum sentences only where the offender was not "sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole." 2003 Nev. Stat., ch. 259, § 13, at 1368, ch. 426, § 9, at 2578.

Webster's controlling sentence was pursuant to a statute that provided for "eligibility for parole beginning when a minimum of 10 years has been served." See NRS 200.030(5)(a); 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165(2)). Accordingly, Webster was not entitled to the application of statutory credits to his minimum sentence. See *Williams v. State Dep't of Corr.*, 133 Nev. 594, 597-99, 402 P.3d 1260, 1263-64 (2017).

Webster also claimed the application of NRS 209.4465(8) violates the Ex Post Facto Clause. Assuming, without deciding, that NDOC was applying NRS 209.4465(8) retroactively to Webster, his claim lacked merit. A requirement for an Ex Post Facto Clause violation is that the statute being applied retroactively disadvantaged the offender. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). Because Webster was not entitled to the application of credits to his minimum sentence before NRS 209.4465(8) was enacted, any application of NRS 209.4465(8) would not have been to his detriment and, thus, would not violate the Ex Post Facto Clause.

To the extent Webster alleged a violation of the Equal Protection Clause, this court addressed a similar claim and found it to lack merit. See *Vickers v. Dzurenda*, 134 Nev. 747, 748-51, 433 P.3d 306, 308-10 (Ct. App. 2018). And to the extent Webster claimed he was entitled to labor and/or educational credits for times he was willing but unable to participate in labor and/or educational programs because of a lack of prison opportunities, we addressed a similar claim and found it to lack merit. See

*id.* at 748, 433 P.3d at 308. We therefore conclude the district court did not err by denying these claims.

Having concluded Webster's claims lack merit, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Joseph Lee Webster  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk