IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERICK MARQUIS BROWN,
Appellant,
vs.
JERRY HOWELL, WARDEN; OFFENDER MANAGEMENT DIVISION; AND THE STATE OF NEVADA,
Respondents.

No. 80592-COA

FILED

DEC 11 2020

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

ORDER OF AFFIRMANCE

Erick Marquis Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 7, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Brown claimed he is entitled to the application of statutory credits to his minimum sentences pursuant to NRS 209.4465(7)(b). The district court found Brown was convicted of first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily harm of a victim aged 65 or older and first-degree kidnapping resulting in substantial bodily harm, both of which he committed in 2002.[1] These findings are supported by the record before this court. At the time Brown committed his crimes,

[1]Brown was also convicted of burglary while in possession of a firearm, robbery with the use of a deadly weapon, victim aged 65 or older, and robbery with the use of a deadly weapon. The sentences for these counts were ordered to run concurrently to Brown's sentences for first-degree kidnapping. The sentences for first-degree kidnapping control for parole purposes, *see* NRS 213.1213(1); therefore, we do not consider whether Brown should receive credits toward his minimum terms for his other sentences.

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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. Brown was sentenced pursuant to a statute that provided for "eligibility for parole beginning when a minimum of 15 years has been served." NRS 200.320(1)(c); *see also* 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165 (1995)). Accordingly, Brown was not entitled to the application of statutory credits to his minimum sentences. *See Williams v. State Dep't of Corr.*, 133 Nev. 594, 597-99, 402 P.3d 1260, 1263-64 (2017).

Brown also claimed that the application of NRS 209.4465(8) violated the Equal Protection Clause. Brown failed to demonstrate NRS 209.4465(8) was applied to his sentences. He was barred from receiving credits toward his minimum sentences based on NRS 209.4465(7)(b). Further, this court has 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). We therefore conclude the district court did not err by denying this claim.

Brown also claimed he was entitled to work credits because he was willing to work but was unable to do so due to a disability and because the Nevada Department of Corrections (NDOC) does not have enough opportunities to work.[2] Brown was not entitled to work credits for work he did not actually perform. *See* NRS 209.4465(2); *Vickers*, 134 Nev. at 748,

[2]Brown also claimed NDOC's failure to accommodate his disability violated the Americans with Disabilities Act. However, this was a challenge to Brown'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).

433 P.3d at 308. Therefore, we conclude the district court did not err by denying this claim.

On appeal, Brown argues that the failure to apply credits to his minimum sentences violates the Ex Post Facto Clause. Brown did not raise this claim below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

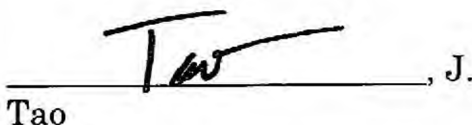
Brown also argues the district court erred by applying NRS 209.4465(7)(b) and NRS 213.1212(2) to him because they were amended in 2017 and 2019, respectively. The district court correctly applied NRS 209.4465(7)(b) as it existed at the time Brown committed his crimes in 2002. Brown opted to aggregate his sentences pursuant to NRS 213.1212(2) and does not demonstrate the 2019 amendments to the statute were applied to him. Therefore, we conclude the district court did not err.

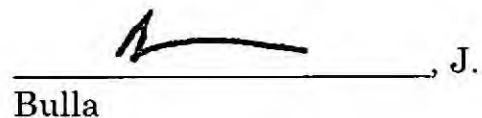
Finally, Brown argues he was not given an opportunity to reply to the State's response to his petition. Because the State did not move to dismiss Brown's petition, Brown did not have the right to reply to the State. *See* NRS 34.750(4), (5).

Having concluded Brown is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

__________, C.J.
Gibbons


__________, J.
Tao


__________, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Erick Marquis Brown
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk