IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROMMIE MOSS,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE OF NEVADA, DEPARTMENT OF CORRECTIONS; AND BRIAN WILLIAMS, WARDEN,
Respondents.

No. 80930-COA

FILED

DEC 18 2020

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

ORDER OF AFFIRMANCE

Rommie Moss appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 9, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Moss claimed that, pursuant to NRS 209.4465(7)(b), he is entitled to the application of statutory credits to the minimum term of his deadly weapon enhancement sentence. NRS 209.4465(7) begins, "Except as otherwise provided in subsection[ ] 8," and NRS 209.4465(8) specifically excludes offenders who have been convicted of category B felonies from having statutory credits applied to their minimum sentences.

The district court found Moss is currently serving a sentence that was the result of a conviction for attempted murder with the use of a deadly weapon, a category B felony, committed after the effective date of NRS 209.4465(8). These findings are supported by the record. *See* NRS

193.330(1)(a)(1); NRS 200.030(4), (5); 2007 Nev. Stat., ch. 525, § 22, at 3196. Therefore, Moss was precluded from the application of credits to his minimum sentence. And because a deadly weapon enhancement is merely an additional punishment for the primary offense, NRS 193.165(3); *Nev. Dep't of Prisons v. Bowen*, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987) ("[T]he enhancement sentence for the use of a deadly weapon in the commission of a crime constituted an additional penalty for the primary offense rather than a separate offense."), it shares the same category of felony as the underlying offense, and Moss is thus not entitled to the application of credits to the minimum term of his deadly weapon enhancement sentence. To the extent Moss claims the deadly weapon enhancement violates the Double Jeopardy Clause, we conclude his claim lacks merit. *See Bowen*, 103 Nev. at 479-81, 745 P.2d at 698-99. We therefore conclude the district court did not err by denying this claim.[1]

Finally, Moss also claimed that failure to apply NRS 209.446(6) and NRS 209.4465(7)(b) violates the Equal Protection Clause. This court

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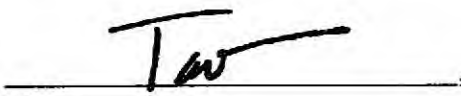
[1]Moss also asks this court to overturn the Nevada Supreme Court's decision in *Perez v. Williams*, 135 Nev. 189, 444 P.3d 1033 (2019). Even were this court so inclined, this court cannot overrule Nevada Supreme Court precedent. *See People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)).

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.

Having concluded Moss 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
Rommie Moss
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk