

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS LAVELL BURRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80979-COA

FILED

DEC 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marcus Lavell Burrell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 16, 2019. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Burrell 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 Burrell 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, Burrell was precluded from the application of credits to his

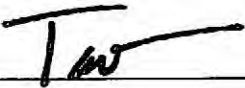
minimum sentence. And because a deadly weapon enhancement is merely an additional punishment for the primary offense, NRS 193.165(3); *Nev. Dep't of Prisons v. Bowen*, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987) (“[T]he enhancement sentence for the use of a deadly weapon in the commission of a crime 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 Burrell is thus not entitled to the application of credits to the minimum term of his deadly weapon enhancement sentence. Burrell’s contention that this would result in a violation of the Double Jeopardy Clause is without 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, Burrell also claimed that the failure to apply statutory credits to his minimum sentences pursuant to NRS 209.446(6) and NRS 209.4465(7)(b) violates the Equal Protection Clause. 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.

¹Burrell also appears to ask 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)).

Having concluded Burrell is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Marcus Lavell Burrell
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

²To the extent Burrell attempts on appeal to challenge the computation of time served for the sentences imposed in district court case number C-15-309793-1, he did not raise these claims below, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).