

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER BERNARD JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND BRIAN
WILLIAMS, WARDEN,
Respondents.

No. 81002-COA

FILED

DEC 28 2020

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

ORDER OF AFFIRMANCE

Christopher Bernard Johnson appeals from an order of the district court denying a December 2, 2019, postconviction petition of a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Johnson 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 Johnson is currently serving an aggregated sentence that was the result of convictions for robbery with the use of a deadly weapon and possession of a stolen vehicle, category B felonies, committed after the effective date of NRS 209.4465(8). These

findings are supported by the record. *See* NRS 193.165(1); 1995 Nev. Stat., ch. 433, § 60, at 1187-88 (NRS 200.380(2)); 1997 Nev. Stat, ch. 150, § 17, at 344 (NRS 205.273(4)). Therefore, Johnson was precluded from the application of credits to his minimum sentence. Moreover, the deadly weapon enhancement is not a crime separate from the primary offense, *see* 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.”), and therefore, the application of credits to the term for the deadly weapon enhancement is treated the same as the application of credits to the term for the primary offense. In addition, Johnson’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


Johnson also claimed that the failure to apply statutory credits to his minimum sentence 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.*

¹Johnson 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)).

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 Johnson 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
Christopher Bernard Johnson
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk