

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONY DEANGELO SWANSON,
Appellant,
vs.
CALVIN JOHNSON, WARDEN,
Respondent.

No. 82091-COA

FILED

JUN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tony Deangelo Swanson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 24, 2020. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Swanson claimed the Nevada Department of Corrections (NDOC) failed to apply statutory credits to his minimum sentence pursuant to *Williams v. State Dep't of Corr.*, 133 Nev. 594, 402 P.3d 1260 (2017). The district court found Swanson was convicted of sexual assault of a minor under 14 years of age and lewdness with a minor under 14 years of age, both committed in 2000. These findings are supported by the record before this court. Swanson was sentenced pursuant to a statute that provided for "eligibility for parole beginning when a minimum of 20 years has been served," 1999 Nev. Stat., ch. 105, § 23, at 431 (formerly NRS 200.366(3)(c)) and another that provided for "eligibility for parole beginning when a minimum of 10 years has been served," 1999 Nev. Stat., ch. 105, § 49, at 471-72 (formerly NRS 201.230).¹ Because he was sentenced pursuant to

¹Swanson elected to consolidate his sentences.

statutes that specified a minimum sentence that must be served before he became eligible for parole, Swanson was precluded from the application of credits to his minimum sentence. See NRS 209.4465(7)(b) (providing for application of credits “to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole”); *Williams*, 133 Nev. at 597-99, 402 P.3d at 1263-64. We therefore conclude the district court did not err by denying this claim.

Swanson next claimed he was entitled to the application of credits to his maximum sentence. Because Swanson’s maximum sentence is life in prison, NDOC is not required to apply statutory credits to his maximum sentence. See *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (“Because appellant was sentenced to a term of life in prison, there is no date from which the credit can be deducted.”). We therefore conclude Swanson was not entitled to relief on this claim.

Swanson next claimed the application of NRS 209.4465(7)(b) and NRS 209.4465(8) violates the Ex Post Facto Clause. For a statute to be ex post facto, the statute must apply to events occurring before it was enacted and it must be to the offender’s detriment. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). Because NRS 209.4465(7)(b) was enacted before Swanson committed his crimes, its application does not violate the Ex Post Facto Clause. And even if NDOC were applying NRS 209.4465(8) to Swanson’s sentence, it was not to his detriment because, as discussed above, he was not otherwise entitled to the application of credits to his sentence. We therefore conclude the district court did not err by denying this claim.

Swanson next claimed the failure to apply statutory credits to his sentence violates the Due Process Clause. The application of statutory

credits “only serves to make an offender eligible for parole earlier.” *Williams*, 133 Nev. at 600 n.7, 402 P.3d at 1265 n.7. And Nevada’s parole scheme “creates no protectable liberty interest sufficient to invoke the Due Process Clause.” *Anselmo v. Bisbee*, 133 Nev. 317, 320, 396 P.3d 848, 850-51 (2017) (internal quotation marks omitted). We therefore conclude the district court did not err by denying this claim.

Finally, Swanson claimed the application of NRS 209.4465 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, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Tony Deangelo Swanson
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk