

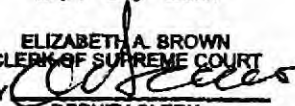
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER COOK,
Appellant,
vs.
TIM GARRETT, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 82664-COA

FILED

OCT 26 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alexander Cook appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Cook argues the district court erred by denying his November 2, 2020, petition. In his petition, Cook asserted that the Legislature recently amended the burglary statute such that offenses similar to his have been reduced to category C felonies. Cook therefore contended that the Nevada Department of Corrections (NDOC) should treat his burglary conviction as a category C felony for purposes of application of statutory credits and apply his credits toward his minimum parole eligibility date.

Pursuant to NRS 209.4465(7), NDOC applies statutory credits toward the minimum parole eligibility dates of certain offenders. However, NRS 209.4465(8) specifically excludes offenders who have been convicted of category B felonies from having statutory credits applied to their minimum parole eligibility dates. Cook burglarized a business in 2015 and was convicted of a category B felony. *See* 2013 Nev. Stat, ch. 488, § 1, at 2987-88 (former NRS 205.060). The Legislature has since amended NRS 205.060, and convictions for burglaries of businesses committed after the effective

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date of the amendments are category C felonies. 2019 Nev. Stat., ch. 633, § 55, at 4425-26; 2019 Nev. Stat., ch. 633, § 137, at 4488 (effective date of July 1, 2020). Thus, Cook is only entitled to have his burglary conviction treated as if it was a category C felony if the Legislature intended for the 2019 amendments of NRS 205.060 to be applied retroactively.


“[T]he proper penalty is the penalty in effect at the time of the commission of the offense,” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008), and in Nevada, “changes in statutes are presumed to operate prospectively absent clear legislative intent to apply a statute retroactively,” *Castillo v. State*, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994), *disapproved of on other grounds by Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995). The question of whether the Legislature intended the amendments to NRS 205.060 to be applied retroactively is an issue of statutory interpretation, and “[s]tatutory interpretation is a question of law subject to de novo review.” *Williams v. State Dep’t of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017).

Cook committed his offense prior to the effective date of the 2019 amendments to NRS 205.060, and nothing in the text of those amendments demonstrates that the Legislature clearly manifested an intent for them to apply retroactively. *See Pub. Employees’ Benefits Program v. Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 155, 179 P.3d 542, 553 (2008) (“[W]hen the Legislature intends retroactive application, it is capable of stating so clearly.”). In addition, it does not “clearly, strongly, and imperatively appear[]” from a review of the amendments that the Legislature’s intent cannot be implemented absent their retroactive application. *Id.* at 154, 179 P.3d at 553 (quotation marks omitted). Accordingly, Cook did not demonstrate that the amendments to NRS

205.060 should be applied retroactively and, accordingly, that NDOC should apply credits to his minimum parole eligibility date as if he had been convicted of a category C felony. We therefore conclude the district court did not err by denying this claim.

Next, Cook appeared to claim that the failure to apply statutory credits to his minimum sentence 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Alexander Cook
Attorney General/Carson City
Clerk of the Court/Court Administrator