

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEXTER OWENS,
Appellant,
vs.
JAMES G. COX,
Respondent.

No. 70805

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Dexter Owens appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Owens argues the district court erred in denying his July 30, 2015, petition. In his petition, Owens first asserted the Nevada Department of Corrections (NDOC) had improperly refused his request to aggregate his sentences, which he believed would permit him to receive an earlier parole hearing. The district court concluded Owens was not entitled to relief because he was convicted prior to 2009 and had failed to request aggregation of his sentences before July 1, 2014, as required by NRS 213.1213(2)(b)(1).² The record supports the district court's conclusion

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²The record reveals Owens was convicted in 2001 of second-degree murder with the use of a deadly weapon and submitted his request for aggregation of his sentences March of 2015.

and Owens fails to demonstrate the district court erred in denying his petition.

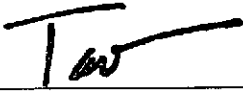
Second, Owens argued denial of his request to aggregate his sentences violates his equal protection rights because inmates similar to him have had their sentences aggregated. “The Equal Protection Clause of the Fourteenth Amendment mandates that all persons similarly situated receive like treatment under the law.” *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). When a classification does not affect fundamental rights, the “legislation at issue will be upheld provided the challenged classification is rationally related to a legitimate governmental interest.” *Id.*

Here, Owens did not demonstrate he and the other inmates were similarly situated given their differing offense dates, different statutes governing aggregation of sentences during the different offense dates, and any differences in the inmates’ requests to aggregate their sentences. Further, Owens did not demonstrate he was a member of a suspect class, or that this issue involved the type of fundamental rights requiring strict scrutiny review. *See id.*; *see also Graziano v. Pataki*, 689 F.3d 110, 117 (2d Cir. 2012) (recognizing prisoners, whether in the aggregate or specified by offense, are not a suspect class and rational basis test will apply); *Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) (recognizing prisoners are not a suspect class and applying rational basis test). And Owens did not demonstrate there is no rational basis for applying aggregation rules differently given differences in offense date, types of sentences, or an inmate’s aggregation request. Therefore, we conclude the district court did not err in denying this claim.

Third, Owens appeared to argue he was entitled to a preliminary injunction allowing him to bypass the NDOC's inmate grievance system given potential harms he faces using the grievance system. The district court properly denied Owens' request for a preliminary injunction regarding the grievance system because such a request is not within the scope of a postconviction petition for a writ of habeas corpus. See NRS 34.720. Therefore, we conclude the district court did not err in denying the petition and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Dexter Owens
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk