

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DALE LAWRENCE VOGELAAR,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN,  
Respondent.

No. 72524

**FILED**

DEC 28 2017

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

*ORDER OF AFFIRMANCE*

Dale Lawrence Vogelaar appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on July 14, 2016.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

In his petition, Vogelaar claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum term. The district court denied the petition because it found Vogelaar is currently serving a prison term for eluding a police officer, a category B felony, *see* NRS 484B.550(3); Vogelaar's sentence was enhanced pursuant to the small habitual criminal statute, a category B felony, *see* NRS 207.010(1)(a); and Vogelaar committed his crime in 2011. For those reasons, the district court found the NDOC may only apply Vogelaar's statutory credits toward his maximum term pursuant to NRS 209.4465(8)(d). Given these circumstances, we conclude the district court did not err by denying this claim.

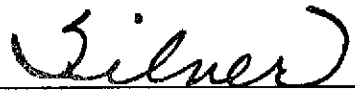
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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

Vogelaar also claimed the failure to apply his statutory credits toward his minimum term was a violation of the Equal Protection Clause. Vogelaar failed to demonstrate a violation of the Equal Protection Clause because he failed to show he was similarly situated to those whose sentences did not fall within NRS 209.4465(7)(b)'s exception, and precluding the most serious offenders from early release is rationally related to a legitimate governmental interest. See *Glauner v. Miller*, 184 F.3d 1053, 1054 (9th Cir. 1999) ("[P]risoners are not a suspect class and there is no fundamental constitutional right to parole."); *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000) (discussing levels of review). Therefore, the district court did not err by denying this claim.

Finally, Vogelaar appeared to allege an ex post facto violation in his reply to the State's motion to dismiss. This claim was not properly raised in his reply, see *Barnhart v. State*, 122 Nev. 301, 130 P.3d 650 (2006) (the district court should only consider issues pleaded in the petition or supplemental petition to which the State has had an opportunity to respond), and the district court did not abuse its discretion by failing to address it. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

cc: Hon. James Todd Russell, District Judge  
Dale Lawrence Vogelaar  
Attorney General/Carson City  
Carson City Clerk