

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MIGUEL ANGEL RODRIGUEZ-
FRANCO,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 72546

FILED

DEC 28 2017

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

Miguel Angel Rodriguez-Franco appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on June 14, 2016.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

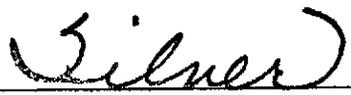
In his petition, Rodriguez-Franco claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his minimum term. The district court denied the petition because it found Rodriguez-Franco is currently serving a prison term for battery by a prisoner, burglary, and unlawful sale of a controlled substance, all of which are category B felonies, *see* NRS 200.481(2)(f), NRS 205.060(2), NRS 453.321(2); and Rodriguez-Franco committed these crimes in 2012 and 2013. For those reasons, the district court found the NDOC may only apply Rodriguez-Franco'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.

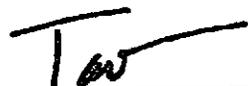
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

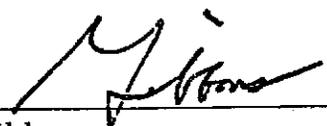
Rodriguez-Franco also claimed his due process and equal protection rights were violated. Rodriguez-Franco failed to support these claims with specific facts that, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984). Therefore, the district court did not err by denying these claims.

Finally, the district court referred Rodriguez-Franco to the director of prisons for the forfeiture of statutory credits. The district court determined Rodriguez-Franco should be referred for forfeiture of credits because his claims were not warranted by existing law or by a reasonable argument or a change in law or a change in the interpretation of existing law. The district court cited to *Vonseydewitz v. Legrand*, Docket No. 66159 (Order of Reversal and Remand, June 24, 2015) as the reason Rodriguez-Franco's claims were improper. However, *Vonseydewitz* is not persuasive authority because it is an unpublished order filed before 2016. See NRAP 36(c)(3). Therefore, we conclude the district court erred by referring Rodriguez-Franco for the forfeiture of credits and we reverse the district court's order as to this finding. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Miguel Angel Rodriguez-Franco
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk