

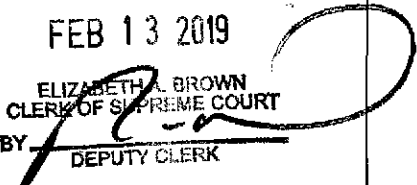
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE ALLEN ROSASCHI,
Appellant,
vs.
HAROLD WICKHAM, WARDEN,
Respondent.

No. 71361-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying Jamie Allen Rosaschi's postconviction petition for a writ of habeas corpus challenging the computation of time served that was filed on July 11, 2016.¹ First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

Rosaschi was sentenced to a term of 24 to 120 months in district court case number CR12-1388 on November 26, 2012. On that same date he was sentenced to serve a term of 24 to 120 months in district court case number CR12-1398, to be served consecutive to the term imposed in CR12-1388. On October 18, 2013, Rosaschi was sentenced to serve a term of 48 to 120 months in district court case number CR8249, to be served concurrently with the sentences imposed in CR12-1388 and CR12-1398. Pursuant to NRS 213.1213(1), the sentence imposed in CR8249 is his controlling sentence for the purposes of determining parole eligibility.

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

Rosaschi claims the district court erred by denying his claim that he is being denied due process based on the way his sentences are structured. Specifically, he argues that because his sentence in CR8249 is his controlling sentence, the Nevada Department of Corrections (NDOC) is requiring him to serve his entire sentence in CR12-1388, without giving him an opportunity to parole to his consecutive sentence in CR12-1398. He asserts that when he was sentenced in CR8249, it was the intention of all parties, including the judge, that he would be able to serve his terms in both CR12-1388 and CR12-1398 while he is serving his minimum term of 48 months in CR8249. He argues that his current sentence structure will require him to serve at least one year more than was anticipated when his sentences were imposed² and, in order to avoid due process violations, his sentences must be considered as aggregated under NRS 176.035 for parole eligibility and sentence expiration purposes.

Even assuming NDOC was not properly calculating Rosaschi's sentences in CR8249 and CR12-1388, the only relief available to address Rosaschi's claim would be a parole hearing in CR12-1388 so he could be paroled to his sentence in CR12-1398. The record before this court demonstrates that on May 1, 2017, Rosaschi was paroled from his sentences in both CR8249 and CR12-1388 and he began serving his sentence in CR12-1398. Because no statutory authority or caselaw permits a retroactive grant

²To the extent Rosaschi claims that his plea in CR8249 is invalid because he was not informed of how his sentence in that case would effect how he would serve his sentences in CR12-1388 and CR12-1398, he did not raise this claim in the district court and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

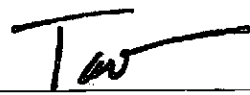
of parole, see *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989), Rosaschi's claim is moot, see *Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989). Therefore, we decline to address this claim.³

Rosaschi also claims the district court erred by issuing its order denying his petition just seven days after the State filed its answer, without providing him an opportunity to file a reply. However, the State did not file a motion to dismiss and, therefore, Rosaschi had no right to file a reply. See NRS 34.750(5). Accordingly, we deny this claim.

Next, Rosaschi claims the district court erred by denying his claim that NDOC is not properly applying his meritorious credit to his sentence. The district court found that Rosaschi's claim was premised on a misunderstanding of how his projected expiration date is calculated. The district court further found that NDOC has properly applied all of his meritorious credit. The record supports this finding, and we conclude the district court did not err by denying this claim.

Having concluded Rosaschi is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

³In its brief, amicus curiae argues NDOC erred by failing to comply with Rosaschi's request to aggregate his sentences pursuant to NRS 213.1212(3). This claim was not directly raised by Rosaschi in his petition in the district court, and to the extent it was raised, for the same reasons discussed above, this claim is also moot.

cc: First Judicial District Court
Hon. William A. Maddox, Senior Judge
Jamie Allen Rosaschi
Attorney General/Carson City
Carson City Clerk