

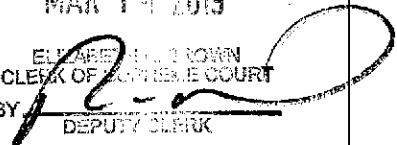
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE BLADIMIR-OLIVARRIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76159-COA

**FILED**

MAR 14 2019

ELIZABETH TOWN  
CLERK OF APPEALS COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jose Bladimir-Olivarria appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 28, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

First, Bladimir-Olivarria claims the Nevada Department of Corrections (NDOC) violated the Equal Protection Clause by applying his statutory credits to his sentence differently than it applied the statutory credits to another individual's sentence. "At the heart of the Equal Protection Clauses is the idea that all people similarly situated are entitled to equal protection of the law." *Vickers v. Dzurenda*, 134 Nev. \_\_\_, \_\_\_, 433 P.2d 306, 308 (2018). Bladimir-Olivarria has not demonstrated that he and the other individual are similarly situated. Bladimir-Olivarria committed his crimes after NRS 209.4465 was amended to prohibit offenders convicted of category B felonies from receiving credit toward their minimum sentence, whereas the other individual committed his crimes before NRS 209.4465

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

was amended and contained this prohibition. See 2007 Nev. Stat., ch. 525, § 5, at 3177; see generally *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (observing “that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense”). Consequently, Bladimir-Olivarria and the other individual are not similarly situated and NDOC did not violate his right to equal protection of the law.

Second, Bladimir-Olivarria claims NRS 209.4465 is ambiguous and the ambiguity must be resolved in his favor. Where a statute is clear and unambiguous on its face, we will look no further for its meaning. *Williams v. State Dep’t of Corr.*, 133 Nev. \_\_\_, \_\_\_, 402 P.3d 1260, 1262 (2017). A statute is ambiguous if the language “lends itself to two or more reasonable interpretations.” *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). Here, the statutory language used in NRS 209.4465 is clear and does not lend itself to more than one reasonable interpretation.<sup>2</sup> Consequently, Bladimir-Olivarria has not demonstrated he is entitled to relief.

Finally, Bladimir-Olivarria claims the district court violated his constitutional right to be present during the proceedings on his writ petition. The Nevada Supreme Court has previously observed,

[t]he right to be present [at the critical stages of a trial] is rooted in the Confrontation Clause and the Due Process Clause of the Federal Constitution. The confrontation aspect arises when the proceeding involves the presentation of evidence.

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<sup>2</sup>The statutory language of NRS 209.4465(7) begins with “[e]xcept as otherwise provided in subsection[ ] 8,” and NRS 209.4465(8)(d) specifically excludes offenders convicted of category A or B felonies from having credit applied to their minimum term.

The due process aspect has been recognized only to the extent that a fair and just hearing would be thwarted by the defendant's absence. The right to be present is subject to harmless error analysis. The defendant must show that he was prejudiced by the absence.

*Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996) (internal citations omitted). Here, the record demonstrates the district court did not entertain oral arguments, no parties were present when it made its ruling, and the ruling was based solely on the pleadings pursuant to NRS 34.770(2). Consequently, Bladimar-Olivarria has not demonstrated his absence from court proceedings on his writ petition was prejudicial.

Having concluded Bladimar-Olivarria is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.



Tao

, J.



Gibbons

, J.



Bulla

, J.

cc: Hon. Linda Marie Bell, Chief Judge  
Jose Bladimir-Olivarria  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk