

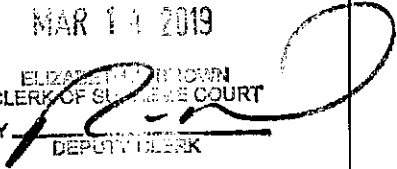
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ROMAN HERRERA-HERRERA,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 76019-COA

FILED

MAR 14 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Roman Herrera-Herrera appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 9, 2018.¹ Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his petition, Herrera-Herrera claimed the Nevada Department of Corrections (NDOC) was not applying the statutory credits he earned to his minimum sentences as required by NRS 209.4465(7)(b). The district court found that his “claim for relief was not supported by the facts or the law” and ordered the petition denied. This appeal followed.

First, Herrera-Herrera appears to claim the district court erred in its interpretation of NRS 209.4495. We have reviewed the statute and conclude the district court correctly determined Herrera-Herrera was not entitled to have credits applied to his minimum sentences because he committed his crimes after NRS 209.4465 was amended in 2007 and the 2007 amendments specifically exclude category B felons from receiving

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

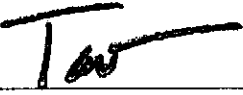
credit toward their minimum sentence.² See 2007 Nev. Stat., ch. 525, § 5, at 3177; NRS 209.4465(8)(d); see generally *Robert E. v. Justice Court of Reno Twp.*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983) (“When presented with a question of statutory interpretation, the intent of the legislature is the controlling factor and, if the statute under consideration is clear on its face, a court cannot go beyond the statute in determining legislative intent.”).

Next, Herrera-Herrera claims the district court erred by failing to apply the Nevada Supreme Court’s decision in *Williams v. State Department of Corrections*, 133 Nev. ___, 402 P.3d 1260 (2017). However, his claim is without merit because he committed his crimes in 2010, and the Nevada Supreme Court expressly limited the *Williams* decision to crimes that were committed before June 30, 2007. See *Williams*, 133 Nev. at ___ n.7, 402 P.3d at 1265 n.7.

Finally, Herrera-Herrera claims the district court erred by denying his petition because NDOC’s failure to apply the statutory credits he has earned pursuant to NRS 209.4465(7)(b) based on the date he committed his crimes violates his right to equal protection of the law. However, his claim is without merit because “the disparate application of statutory credits to parole eligibility based on when an offender committed on offense is rationally related to a legitimate governmental interest and thus does not offend the Equal Protection Clauses of the United States and Nevada Constitutions.” *Vickers v. Dzurenda*, 134 Nev. ___, ___, 433 P.3d 306, 310 (Ct. App. 2018).

²Herrera-Herrera was convicted of conspiracy to commit robbery, attempted robbery with the use of a deadly weapon, and battery with the use of a deadly weapon resulting in substantial bodily harm for offenses he committed in 2010. See NRS 193.165(1); NRS 193.330(1)(a)(1); NRS 199.480(1); NRS 200.380(2); NRS 200.481(2)(e)(2).

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


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Jose Roman Herrera-Herrera
Attorney General/Carson City
Pershing County Clerk