

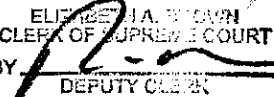
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VERNON D. WESLEY,
Appellant,
vs.
ASST. WARDEN SANDIE; AND
OFFICIALLY RENEE BAKER,
WARDEN,
Respondents.

No. 75803-COA

FILED

MAR 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Vernon D. Wesley appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on September 9, 2016.¹ Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Wesley claimed the Nevada Department of Corrections improperly declined to apply his statutory credits to the minimum and maximum terms of his sentences. He also claimed this failure violated the Ex Post Facto and Equal Protection Clauses. The district court denied the claims as to his minimum sentences as moot because Wesley had already appeared before the parole board on his sentences. Further, even if this

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).

claim was not moot, the district court found Wesley's claim lacked merit because Wesley was convicted of attempted sexual assault with a minor under the age of 14 and attempted lewdness with a child under the age of 14, both category B felonies, *see* NRS 193.330(1)(a)(1); NRS 200.366(3); NRS 201.230(2), committed in 2011, and, therefore, he was not entitled to credits toward his minimum terms. The district court also found the prison was applying his statutory credits toward the maximum terms of his sentences. The district court also found the denial of statutory credits did not constitute an ex post facto violation.

“Because the application of credits under NRS 209.4465(7)(b) only serves to make an offender eligible for parole earlier, no relief can be afforded where the offender has already. . . appeared before the parole board on the sentence,” *see Williams v. State Dep't of Corr.*, 133 Nev. ___, ___ n.7, 402 P.3d 1260, 1265 n.7 (2017), we conclude the district court correctly found Wesley's claim as to his minimum sentences was moot, *see Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989). Further, the district court correctly determined Wesley's claim regarding his minimum sentences lacked merit. *See* NRS 209.4465(8)(d). The district court also correctly determined Wesley was receiving credits toward his maximum terms. Wesley also failed to demonstrate a violation of the Ex Post Facto or Equal Protection Clauses. *See Weaver v. Graham*, 450 U.S. 24, 28-29 (1981); *Vickers v. Dzurenda*, 134 Nev. ___, ___, 433 P.3d 306, 310

(Ct. App. 2018). Therefore, we conclude the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.



_____, J.

Tao



_____, J.

Gibbons



_____, J.

Bulla

cc: Hon. Jim C. Shirley, District Judge
Vernon D. Wesley
Attorney General/Carson City
Pershing County Clerk