

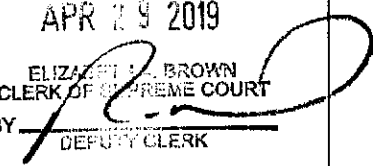
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO JESUS ANTONACCIO,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 75865-COA

FILED

APR 29 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Mario Jesus Antonaccio appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his petition, Antonaccio claimed the Nevada Department of Corrections improperly declined to apply his statutory credits to his minimum term. The district court denied Antonaccio's claim regarding his current sentence as moot because Antonaccio had already appeared before the parole board on his sentence. Further, even if this claim was not moot, the district court found Antonaccio's claim lacked merit because Antonaccio was convicted of second-degree murder, a category A felony that required a minimum term to be served before parole eligibility, *see* 1999 Nev. Stat., ch. 552, § 8, at 2882, and, therefore, he was not entitled to credit toward his minimum term. Substantial evidence supports the decision of the district court, *see* 1997 Nev. Stat., ch. 641, § 4(7)(b), at 3175, *Williams v. State Dep't*

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


of *Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017), and we conclude the district court did not err by denying this claim.

To the extent Antonaccio challenged the application of credits toward the minimum term of a sentence he has not yet begun to serve, this claim was not yet ripe. See *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1, 175 P.3d 906, 907 n.1 (2008) (“A case is ripe for review when the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, and yields a justiciable controversy.” (internal punctuation and quotation marks omitted)).

On appeal, Antonaccio also claims the failure to apply credits to his minimum term was an equal protection and ex post facto violation. He also appeared to challenge his judgment of conviction by arguing the deadly weapon enhancement violated his double jeopardy rights. These claims were not raised in his petition filed below, and we decline to consider them for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Mario Jesus Antonaccio
Attorney General/Carson City
Pershing County Clerk