

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH D. BARRETT,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 77057-COA

FILED

MAY 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kenneth D. Barrett appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his petition, Barrett claimed the Nevada Department of Corrections (NDOC) erred by improperly declining to apply his statutory credits from sentences he has already expired or been paroled from. In support of his claim, Barrett argues *Garlotte v. Fordice*, 515 U.S. 39 (1995) overruled *Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 774 P.2d 1047 (1989), and therefore, the district court erred by relying on *Johnson* to deny him relief on the sentences he has been paroled from.

Barrett fails to demonstrate the district court erred. *Garlotte* did not overrule the holding in *Johnson* that when a prisoner has “expired his sentence, any question as to the method of computing those sentences was rendered moot.” *Johnson*, 105 Nev. at 316, 774 P.2d at 1049. Instead, *Garlotte* discussed what constitutes custody for habeas corpus petitioners when they are serving consecutive sentences and want to challenge their conviction. 515 U.S. at 44-47. *Garlotte* did not discuss credits a prisoner

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


has earned pursuant to statute and the right to have those credits apply to expired or paroled from sentences.


We conclude the district court properly denied Barrett's claim that his credits should apply to the minimum parole eligibility of sentences he has expired or been paroled from. The only relief available in this situation would be a parole hearing, and Barrett has either expired or been paroled from his previous sentences. No statutory authority or case law permits a retroactive grant of parole. See *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 884 (1989). Accordingly, we conclude the district court did not err by denying Barrett's petition.

Next, Barrett claimed NDOC had improperly calculated his good time credits for his primary offenses and the deadly weapon enhancements based on separate sentences rather than one sentence. The district court found Barrett's claims lacked merit because he has already aggregated his remaining deadly-weapon-enhancement sentences, NDOC was properly applying Barrett's statutory credits to his current terms, and Barrett was not entitled to any additional relief for already-concluded terms. The record supports the district court's findings and we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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