

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEREK LOWELL KIRK,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 76536-COA

**FILED**

JUN 11 2019

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

*ORDER OF AFFIRMANCE*

Derek Lowell Kirk appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 28, 2017.<sup>1</sup> Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Kirk first claimed the Nevada Department of Corrections (NDOC) has erroneously refused to credit him 120 days of credit for completing two correspondence courses. Kirk claimed the paralegal studies and civil litigation courses were “vocational education and training,” and accordingly, he was entitled to 60 days of credit per course pursuant to NRS 209.449(1)(a). The district court found Kirk’s correspondence courses were not approved for credits. This finding is supported by substantial evidence in the record. *See* Administrative Regulation (AR) 803.01(1)(B) (“Non-accredited correspondence courses are not eligible for credit awards.”).

---

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

On appeal, Kirk challenges the district court's reliance on NDOC's administrative regulations to resolve his claim, because the awarding of credits under NRS 209.449(1)(a) is mandatory. NRS chapter 209 plainly gives the NDOC director (Director) and the Board of State Prison Commissioners the authority to create and implement regulations with respect to the management of the prisons and the prisoners, including education programs. *See* NRS 209.111(3); NRS 209.131(6); NRS 209.389(1); NRS 209.391(2). And the regulations do not conflict with the plain language of NRS 209.449(1)(a), which is silent as to whether credits can only be for approved courses.<sup>2</sup> We therefore conclude the district court did not err by relying on administrative regulations and, accordingly, by denying this claim.

Kirk next claimed his high grades entitled him to 60 days of credit for exceptional achievements or meritorious service for each of the two courses. If an offender is awarded credit pursuant to NRS 209.449(1) and completes it "with meritorious or exceptional achievement, the Director *may* allow not more than 60 days of credit in addition to the 60 days allowed

---

<sup>2</sup>NRS 209.449(1) provides, in relevant part,

An offender who has no serious infraction . . . must be allowed, in addition to the credits provided pursuant to NRS 209.433, 209.443, 209.446 or 209.4465, a deduction of 60 days from the maximum term or the maximum aggregate term of the offender's sentence, as applicable, for the successful completion of: (a) A program of vocational education and training. . . .

for completion of the program.” NRS 209.449(2) (emphasis added). Similarly, the Director “may” award up to 90 days of credit “for an offender who engages in exceptional meritorious service.” NRS 209.4465(5). Under either statute, the Director has discretion in whether to award any such credits. Kirk did not demonstrate the Director abused his discretion by declining to allow Kirk meritorious or exceptional credits based on his performance in unapproved courses. We therefore conclude the district court did not err by denying this claim.<sup>3</sup>

Finally, Kirk claimed NDOC failed to award him work credits for the time he spent taking the courses. “Inmates will receive work credits for participation in *approved educational programs* offered in the [NDOC].” AR 850.01(11) (emphasis added). As discussed above, Kirk’s courses were not approved. He was thus not entitled to work credits for his courses. To the extent Kirk meant he was entitled to the application of labor credits pursuant to NRS 209.4465(2), those credits are entirely discretionary,<sup>4</sup> and Kirk failed to demonstrate the Director abused his discretion in declining

---


<sup>3</sup>On appeal, Kirk argues he was not seeking credit for exceptional achievement or meritorious service, but rather he was simply asking the district court to notify the Director that he had the discretion to award such credits for his performance in his two courses. Nothing in his claim below suggested he was seeking such relief, and we decline to consider this argument on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


<sup>4</sup>The relevant portion of the statute states, “In addition to the credits allowed pursuant to subsection 1, the Director *may* allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits.” NRS 209.4465(2) (emphasis added).

to award labor credits. We therefore conclude the district court did err by denying this claim.

Having concluded Kirk's claims lack merit, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jim C. Shirley, District Judge  
Derek Lowell Kirk  
Attorney General/Carson City  
Pershing County Clerk