

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVAN STONE,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 77556-COA

FILED

JUN 13 2019

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

ORDER OF AFFIRMANCE

Evan Stone 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 July 5, 2018, petition, Stone 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, Stone 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.

Stone 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

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

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

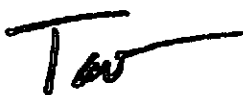
We conclude the district court properly denied Stone's claim that his credits should apply to the minimum parole eligibility of sentences he has expired or been paroled from. The only relief available in this situation would be a parole hearing, and Stone has either expired or been paroled from his previous 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 this claim.


The district court also found NDOC correctly did not apply statutory credits toward the parole eligibility date for Stone's current kidnapping term because the relevant sentencing statute specifies a minimum term that must be served before Stone becomes eligible for parole. *See* 1995 Nev. Stat., ch. 443, § 54, at 1184 (former NRS 200.320). In addition, the district court found Stone is currently serving a term for attempted lewdness with a child under the age of 14 and NDOC is properly applying statutory credits to Stone's parole eligibility date for that term pursuant to NRS 209.4465(7)(b) as he committed that offense prior to the effective date of NRS 209.4465(8). Finally, the district court found any challenge to the application of credits toward the parole eligibility dates for terms Stone had not yet begun to serve was not yet ripe and, therefore, declined to consider such a challenge. *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)). Based on the record before this court, we conclude the district court properly denied relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Evan Stone
Attorney General/Carson City
Pershing County Clerk