

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 76528-COA

FILED

JUL 18 2019

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

ORDER OF AFFIRMANCE

Charles Matthew Wirth appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 19, 2017.¹ Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Wirth claims the district court erred by denying his claim that the Nevada Department of Corrections (NDOC) failed to apply full credits earned pursuant to NRS 209.4465 and NRS 209.449. Below, Wirth referred to a 2008 NDOC memorandum that he interpreted as entitling him to receive two days of credit for every credit he earned. Nothing in NRS 209.449, NRS 209.4465, or the corresponding administrative regulations supports Wirth's claim. Rather, the statutes use "credits" and "days" interchangeably, and they mean the same thing. Accordingly, notwithstanding any NDOC memorandum, Wirth was entitled to one day

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

for every credit he earned. He failed to demonstrate NDOC was not awarding him the appropriate days of credit. We therefore conclude the district court did not err by denying this claim.

Wirth also claims the district court erred by denying his request to produce transcripts at the State's expense of the evidentiary hearing held in regard to the underlying petition. To be entitled to transcripts at the State's expense, Wirth had to prove, in addition to his indigency, that his claims had merit that would tend to be supported by the transcripts. *Cf. Peterson v. Warden*, 87 Nev. 134, 135-36, 483 P.2d 204, 205 (1971), *superseded by statute on other grounds as stated in Renteria-Novoa v. State*, 133 Nev. 75, 77, 391 P.3d 760, 762 (2017). Wirth's request simply stated that he needed the transcripts for evidence in *Wirth v. Warden*, Docket No. 75469, and in his federal case. Wirth's request failed to meet the pleading requirements. We therefore conclude the district court did not err by denying Wirth's request for transcripts.

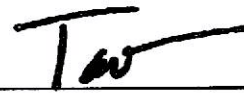
Wirth also challenges the district court's written disposition of his claim that NDOC is misclassifying the severity level of his crimes. Wirth's classification claim was a challenge to his conditions of confinement and, thus, not cognizable in a postconviction habeas petition. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). We therefore conclude Wirth is not entitled to relief on this ground.

Finally, to the extent Wirth challenges the number of credits NDOC has assigned to each approved course or the number of days that are in a year, these claims were not properly raised below, and we therefore

decline to consider them on appeal. *See Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Charles Matthew Wirth
Attorney General/Carson City
Pershing County Clerk

²We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61.