

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA NATHANIEL BANASIAK,  
Appellant,  
vs.  
JO GENTRY, WARDEN; AND THE  
STATE OF NEVADA,  
Respondents.

No. 76874-COA

**FILED**

JUL 30 2019

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

*ORDER OF AFFIRMANCE*

Joshua Nathaniel Banasiak appeals from a district court order denying the postconviction petition for a writ of habeas corpus filed on January 9, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In his petition, Banasiak argued the Nevada Department of Corrections is improperly denying him the deduction of statutory credit from his minimum sentence. The district court denied this claim, concluding that because Banasiak was convicted of robbery with the use of a deadly weapon and assault with a deadly weapon, both category B felonies, for acts committed in 2016, NRS 209.4465(8)(a), (d) precluded application of credit to his minimum term. The record supports the district court's conclusion, and we conclude the district court did not err by denying this claim.


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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


Banasiak also argued applying NRS 209.4465 to deny him the application of credit to his minimum sentence violates the Ex Post Facto Clause. The district court denied this claim, concluding that, because Banasiak committed his offense after the effective date of the statute, there was no ex post facto violation. The record supports the district court's conclusion, and we conclude the district court did not err by denying this claim. See *Weaver v. Graham*, 450 U.S. 24, 28-29 (1981).

Finally, Banasiak requested the district court to appoint counsel and order an evidentiary hearing. We conclude the district court did not err by denying these requests. See *Renteria-Novoa*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017); NRS 34.750; NRS 34.770. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Linda Marie Bell, Chief Judge  
Joshua Nathaniel Banasiak  
Attorney General/Las Vegas  
Eighth District Court Clerk