


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KEITH MARSHALL,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 77305-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Brian Keith Marshall appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 17, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.


In his petition, Marshall claimed the Nevada Department of Corrections improperly declined to apply his statutory credits to the minimum terms for his second-degree murder and robbery convictions. He also claimed the failure to apply these credits was a violation of the Equal Protection clause. The district court found that Marshall was not entitled to have credits applied to his minimum terms at this time because he was currently serving the sentence for his second-degree murder conviction, which he committed in 2006. Pursuant to NRS 200.030(5), he was required to serve a minimum term before he was eligible for parole. Further, the district court found Marshall's claim for credits toward his sentence for robbery was not ripe because had not yet begun to serve that sentence.


Under the version of NRS 209.4465(7)(b) in effect at the time Marshall committed his crimes, offenders who were sentenced pursuant to a statute that specified a minimum sentence that must be served before

they became eligible for parole were not allowed to apply statutory credits toward their minimum terms. 1997 Nev. Stat., ch. 641, § 4, at 3175; *see also Williams v. State, Dep't. of Corr.*, 133 Nev. 594, 599, 402 P.3d 1260, 1264 (2017). Further, while Marshall aggregated his sentences, NRS 213.1212(2) allows credits to be earned “only to the extent that the credits would otherwise be earned had the sentences not been aggregated.” Because Marshall was sentenced pursuant to a statute that specified a minimum term that must be served prior to parole eligibility, *see* NRS 200.030(5), he was not entitled to have credits applied to his minimum term for his second-degree murder conviction. Therefore, we conclude the district court did not err by denying this claim.

Further, we agree with the district court that Marshall’s claim with regard to his robbery conviction is not yet ripe because he has not yet begun to serve that sentence. *See Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 38 n.1, 175 P.3d 906, 907 n.1 (2008). Finally, we conclude Marshall’s equal-protection claim lacks merit. *See Vickers v. Dzurenda*, 134 Nev. Adv. Op. 91, *3-8, 433 P.3d 306, 308-310 (Ct. App. 2018). Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Brian Keith Marshall
Attorney General/Carson City
Pershing County Clerk