

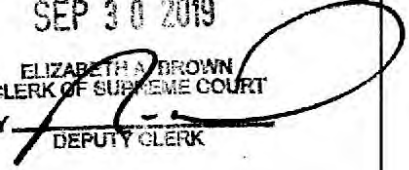
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDYN WILLIAM GAYLER,
Appellant,
vs.
NDOC; JAMES DZURENDA,
DIRECTOR; RENEE BAKER, WARDEN;
AND DWAYNE DEAL, OMD,
Respondents.

No. 77550-COA

FILED

SEP 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Brandyn William Gayler appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Gayler claimed his equal protection rights had been violated because he did not have the same opportunities to earn labor and/or study credits at his initial place of incarceration as he would have had he been housed in another prison. A postconviction petition for a writ of habeas corpus may only be used to challenge a judgment of conviction, a sentence, or the computation of time served pursuant to a judgment of conviction. NRS 34.720. It may not be used to challenge a condition of confinement. *Bowen v. Warden*, 100 Nev. 489, 686 P.2d 250 (1984). Gayler's claim was a challenge to the condition of confinement and was thus not cognizable in a postconviction petition for a writ of habeas corpus. Moreover, as a separate and independent ground to deny relief, an inmate has no right to labor or study while in prison. See NRS 209.387; NRS 209.389(4); NRS 209.461(1), (6); see also *Collins v. Palczewski*, 841 F. Supp. 333, 336-37 (D.Nev. 1993).

Thus, Gayler could not demonstrate any lack of opportunities for labor or study violated any protected right. We therefore conclude the district court did not err by denying this claim.

Gayler also asked for the retroactive application of labor and/or study credits for the time he was willing and able to perform but unable to because of the lack of opportunity due to his housing assignment. An inmate must actually perform labor or appropriate study to receive the credits. *See Vickers v. Warden*, 134 Nev., Adv. Op. 91, *3, 433 p.3d 306, 308 (Ct. App. 2018). We therefore conclude Gayler was not entitled to credits he did not earn.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Brandyn William Gayler
Attorney General/Carson City
Pershing County Clerk