

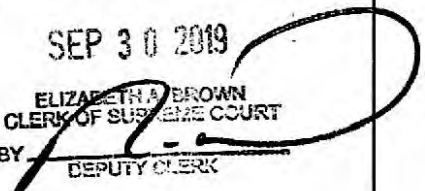
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ANTHONY BENSON,  
Appellant,  
vs.  
THE STATE OF NEVADA; NDOC; AND  
WARDEN SDCC,  
Respondents.

No. 77893-COA

**FILED**

SEP 30 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*


Robert Anthony Benson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 26, 2018. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In his petition, Benson claimed the Nevada Department of Corrections was improperly declining to apply his statutory credits toward his minimum term. For a person who committed his or her crime(s) prior to the 2007 amendments to NRS 209.4465, statutory credits do not apply to the minimum term of the person's sentence if that person has been sentenced pursuant to a statute that specifies a minimum term that must be served before being eligible for parole. NRS 209.4465(7)(b); *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017). Similarly, statutory credit does not apply to the sentence for the deadly weapon enhancement for such a term where the deadly weapon enhancement statute relied upon the statute for the primary offense to set the sentence for the deadly weapon enhancement. *Perez v. Warden*, 135 Nev., Adv. Op. 24, 444 P.3d 1033 (2019).

The district court found Benson is currently serving a sentence for the deadly weapon enhancement portion of his first-degree kidnapping conviction and he committed his crime in 2004. The district court concluded Benson is not entitled to have statutory credit applied to his minimum term based on the fact he was sentenced pursuant to a statute that required a minimum parole eligibility term and, at the time Benson committed his crime, the deadly weapon enhancement statute required the imposition of a term equal to that for the primary offense. *See* 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165(1)) (requiring the sentence for the deadly weapon enhancement to be equal and consecutive to the sentence for the primary offense); NRS 200.320(2)(b) (providing that a person convicted of first-degree kidnapping shall be punished for “a definite term of 15 years, with eligibility for parole beginning when a minimum term of 5 years has been served”). Substantial evidence supports the findings of the district court, and we conclude the district court did not err by denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Linda Marie Bell, Chief Judge  
Robert Anthony Benson  
Attorney General/Las Vegas  
Eighth District Court Clerk