

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS NOGUERA,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 78440-COA

FILED

DEC 12 2019

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

ORDER OF AFFIRMANCE

Carlos Noguera appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 28, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

First, Noguera claims the district court erred by denying his claim that the Nevada Department of Corrections (NDOC) was improperly declining to apply statutory credits to his minimum terms. Noguera was sentenced pursuant to a statute that specified a minimum term that must be served before a defendant becomes eligible for parole. See NRS 200.366(3)(c) (2003). Because the relevant statute specified a minimum sentence that Noguera must serve before he is eligible for parole, the district court properly found, pursuant to NRS 209.4465(7)(b), NDOC may not apply statutory credits to reduce Noguera's minimum term for his sentences. See *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596-97, 402 P.3d 1260, 1262 (2017). Therefore, we conclude the district court did not err by denying this claim.

Second, Noguera claims the district court erred by denying his claim that the application of NRS 209.4465(7)(b) violates the Ex Post Facto

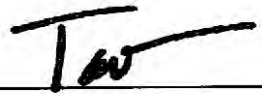
Clause. However, because Noguera committed his crime after NRS 209.4465(7)(b) became effective in 1997, his claim was without merit. See *Weaver v. Graham*, 450 U.S. 24, 28-29 (1981). Therefore, we conclude the district court did not err by denying this claim.

Third, Noguera claims the district court erred by denying his claim that failure to apply credits to all inmates in a uniform manner violates the Equal Protection Clause. This court has addressed a similar claim and found it to lack merit. See *Vickers v. Dzurenda*, 134 Nev. 747, 751-52, 433 P.3d 306, 310 (Ct. App. 2018).

Finally, Noguera claims the district court erred by denying his claims regarding the construction of statutes, and the futility of working and programming in prison. He also claims the district court failed to address his argument regarding *Demosthenes v. Williams*, 97 Nev. 611, 637 P.2d 1203 (1981). Noguera did not raise these claims in his petition below and we decline to address them on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Having concluded Noguera was not entitled to relief, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Carlos Noguera
Attorney General/Carson City
Pershing County Clerk