

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS EDWARD O'DONNELL,  
Appellant,  
vs.  
JO GENTRY, WARDEN; OFFENDER  
MANAGEMENT DIVISION; AND THE  
STATE OF NEVADA,  
Respondents.

No. 77410-COA

**FILED**

DEC 20 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Thomas Edward O'Donnell appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

In his August 17, 2017, petition and later-filed supplements, O'Donnell first claimed the Nevada Department of Corrections (NDOC) failed to properly apply his presentence credits toward his sentence. However, the district court reviewed O'Donnell's sentence records and found NDOC had correctly applied O'Donnell's presentence credits against the sentence he served for his securities-fraud conviction. The record supports the district court's findings. Therefore, the district court did not err by denying this claim.

Second, O'Donnell appeared to claim NDOC improperly declined to apply his statutory credits toward his parole eligibility date. The district court found O'Donnell had previously received parole for his sentence for his securities-fraud conviction and the parole hearing rendered his claim concerning the calculation of that sentence moot. *See Williams v.*

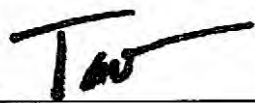
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*State Dep't of Corr.*, 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017) (“[N]o relief can be afforded where the offender has already expired the sentence or appeared before the parole board on the sentence.” (internal citation omitted)). In addition, the district court reviewed O'Donnell's sentence records and found NDOC had properly applied credits toward the minimum parole eligibility date for the sentence for O'Donnell's grand-larceny conviction as it was a category C felony. See NRS 205.222(2); NRS 209.4465(7)(b). The record before this court supports the district court's findings and we conclude the district court did not err by denying this claim.

Third, O'Donnell claimed he was entitled to work credits because he was willing to work, but was unable to due to a disability.<sup>1</sup> We conclude the district court properly determined O'Donnell was not entitled to work credits for work he did not actually perform. See NRS 209.4465(2); *Vickers v. Dzurenda*, 134 Nev. 747, 748, 433 P.3d 306, 308 (Ct. App. 2018). Therefore, the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>1</sup>O'Donnell also claimed NDOC's failure to accommodate his disability violated the Americans with Disabilities Act. However, this was a challenge to O'Donnell's conditions of confinement and a postconviction petition for a writ of habeas corpus was not the proper vehicle to raise such challenges. See *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

cc: Hon. Linda Marie Bell, Chief Judge  
Thomas Edward O'Donnell  
Attorney General/Las Vegas  
Eighth District Court Clerk