

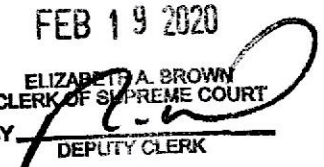
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR MANUEL CERVANTES,
Appellant,
vs.
JERRY HOWELL, WARDEN,
Respondent.

No. 78853-COA

FILED

FEB 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Victor Manuel Cervantes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 7, 2018. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In his petition, Cervantes claimed the Nevada Department of Corrections (NDOC) was improperly denying the application of earned statutory credit to his minimum sentence. Cervantes was convicted of second-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, discharging a firearm out of a motor vehicle, and discharging a firearm at or into a vehicle, all of which were committed in 2002. Cervantes has paroled from or expired all of his sentences except for the deadly weapon enhancement portions of his second-degree murder conviction and his attempted murder conviction, which he is serving concurrently.¹ The deadly weapon enhancement for the second-

¹Any challenge to the sentences that Cervantes has already expired or been paroled from would be moot because the only remedy for failure to apply statutory credits toward a minimum term would be a parole hearing.

degree murder controls Cervantes' parole eligibility date for these remaining sentences because it is the longer of the two sentences.² See NRS 213.1213(1).

The district court found Cervantes was convicted of second-degree murder, which is a category A felony that required a minimum term to be served before he was eligible for parole. Further, the district court found that, at the time Cervantes committed his crime, NRS 193.165 required that Cervantes serve an equal and consecutive term for the deadly weapon enhancement portion of his sentence. See 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165(1)) (prescribing a sentence equal and consecutive to the sentence for the primary offense); NRS 200.030(5)(a) (prescribing a sentence of life with the possibility of parole after a minimum of 10 years has been served for second-degree murder). Therefore, because Cervantes was required to serve a minimum term before he was eligible for parole, he was not entitled to have credit applied to his minimum sentence pursuant to NRS 209.4465(7)(b). The record supports the decision of the

See Williams v. State, Dep't of Corr., 133 Nev. 594, 600 n.7, 402 P.3d 1260, 1265 n.7 (2017).

²We note the district court correctly found that NDOC is properly applying credits toward the minimum and maximum terms of Cervantes' sentence for the deadly weapon enhancement for his attempted murder conviction. See 2001 Nev. Stat., ch. 262, § 11, at 1164 (former NRS 209.4465); see also 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165(1)) (prescribing a sentence equal and consecutive to the sentence for the primary offense); NRS 193.330(1)(a)(1) (an attempt to commit a category A felony is a category B felony punishable for not less than two years and a maximum of not more than 20 years); NRS 200.030(4) (murder is a category A felony).

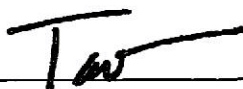
district court, and we conclude the district court did not err by denying this claim.

Cervantes further argued that the application of NRS 209.4465(8) violated the Ex Post Facto Clause. The district court found Cervantes' claim lacked merit because NRS 209.4465(8) was not being applied to him. The record supports the district court's findings, and we conclude the district court did not err by denying this claim.

Cervantes also argued that the failure to apply credits to all inmates in a uniform manner violated 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). Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Victor Manuel Cervantes
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk