

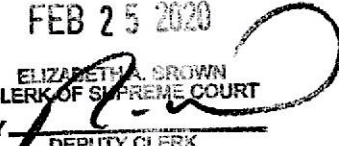
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEON WASHINGTON, JR.,
Appellant,
vs.
WARDEN, ELY STATE PRISON; AND
THE STATE OF NEVADA,
Respondents.

No. 79319-COA

FILED

FEB 25 2020

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Leon Washington, Jr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 12, 2019. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Below, Washington claimed the statutory good time credit he has earned is not being applied to his minimum term as provided for under NRS 209.4465. He further claimed that the application of NRS 209.4465(8) to deny him the application of credit to his minimum term constitutes an ex post facto violation. The district court found that Washington was convicted of a category B felony that was committed after June 30, 2007. Therefore, the court concluded NRS 209.4465(8) precludes the application of credit to Washington's minimum term. The district court further found that Washington's ex post facto claim did not allege that there was a change in a statute that was enacted after his conviction that resulted in his increased punishment. Therefore, the district court denied the petition.

On appeal, Washington does not challenge the district court's determination that NRS 209.4465(8) precludes application of credit to his minimum term. Rather, Washington argues that applying NRS 209.4465(8)


to deny him the application of credit to his minimum term violates his right to equal protection because he has a liberty interest in his earned statutory good time credit and other similarly situated inmates have the credit applied to their minimum terms. To the extent Washington raised his equal protection claim below, this claim lacked merit. *See Vickers v. Dzurenda*, 134 Nev. 747, 748-51, 433 P.3d 306, 308-10 (Ct. App. 2018) (rejecting similar claim). And to the extent Washington is arguing on appeal that the district court erred by denying his ex post facto claim, we conclude the district court did not err by denying this claim because Washington failed to demonstrate that he committed his crimes prior to the enactment of NRS 209.4465(8). *See Weaver v. Graham*, 450 U.S. 24, 29 (1981).

Washington also appears to argue that his right to equal protection is being violated because he is being denied jobs, education, and programs that are available to other prisoners who committed the same crime he has. This claim was not raised below and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

We conclude Washington has failed to demonstrate the district court erred by denying his petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Steve L. Dobrescu, District Judge
Leon Washington, Jr.
Attorney General/Carson City
Attorney General/Las Vegas
White Pine County Clerk