

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE M. PORTILLO,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 79127-COA

**FILED**

**MAY 27 2020**

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

*ORDER OF AFFIRMANCE*

Jose M. Portillo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 26, 2019. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Portillo claims the district court erred by denying his petition. Below, Portillo claimed the Nevada Department of Corrections (NDOC) has been improperly failing to apply his statutory credits to his minimum and maximum sentence. Portillo was convicted of sexual assault resulting in substantial bodily harm. At that time Portillo committed the crime in December 2005, NRS 209.4465(7)(b) allowed for the application of statutory credits to minimum sentences only where the offender was not “sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.” 2003 Nev. Stat., ch. 259, § 13, at 1368, ch. 426, § 9, at 2578. Portillo was sentenced pursuant to a statute that provided for “eligibility for parole beginning when a minimum of 15 years has been served.” 2005 Nev. Stat., ch. 507, § 27, at 2875 (NRS

200.366(2)(a)(2)). Accordingly, Portillo was not entitled to the application of statutory credits to his minimum sentence. See *Williams v. State Dep't of Corr.*, 133 Nev. 594, 597-99, 402 P.3d 1260, 1263-64 (2017). Moreover, because his maximum sentence was a life term, Portillo was also not entitled to the application of credits to his maximum sentence. See *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).

Portillo also claimed the application of NRS 209.4465(8) violates the Ex Post Facto Clause. Assuming, without deciding, that NDOC was applying NRS 209.4465(8) retroactively to Portillo, his claim lacked merit. A requirement for an Ex Post Facto Clause violation is that the statute being applied retroactively disadvantaged the offender. *Weaver v. Graham*, 450 U.S. 24, 29 (1981). Because Portillo was not entitled to the application of credits to his minimum sentence before NRS 209.4465(8) was enacted, any application of NRS 209.4465(8) would not have been to his detriment and thus would not violate the Ex Post Facto Clause.

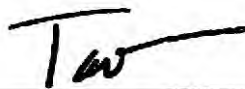
To the extent Portillo sought relief for alleged intentional infliction of emotional distress, such a claim was outside the scope of a postconviction habeas petition. See NRS 34.720.

Portillo also raises new claims in his informal brief on appeal. He claims NDOC has since conceded he was entitled to partial relief and that the district court should have investigated the need for repeal of illegal and unconstitutional statutes. These claims were not raised in the district court, and we decline to consider them on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the foregoing reasons, we conclude Portillo is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jim C. Shirley, District Judge  
Jose M. Portillo  
Attorney General/Carson City  
Pershing County Clerk