

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH D. BARRETT,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 79838-COA

FILED

AUG 12 2020

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

ORDER OF AFFIRMANCE

Kenneth D. Barrett appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his November 26, 2018, petition, Barrett claimed the Nevada Department of Corrections (NDOC) improperly applied the time he served for a burglary conviction. In 1986, Barrett was convicted, pursuant to a guilty plea, of grand larceny auto, burglary, robbery with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. For the burglary conviction, Barrett was sentenced to a term of nine years for the primary offense and to an additional term of ten years for a habitual criminal enhancement.

Barrett began serving the primary burglary sentence on May 1, 2006. He was institutionally paroled to the robbery sentence on March 12, 2010. The record before this court demonstrates he discharged the burglary

sentence entirely on November 27, 2012. On May 23, 2014, the district court filed an amended judgment of conviction that removed the habitual criminal enhancement from the burglary charge. NDOC did not update its records to reflect this amendment for approximately four years.¹

In his petition, Barrett contended that, because of the delay in correcting his records, NDOC failed to account for the full amount of time Barrett actually served for his burglary conviction. He asserted NDOC should apply the nearly four years he served for the burglary conviction toward his remaining prison terms. Barrett is not entitled to such relief.


NDOC applied the nearly four years Barrett served for the burglary sentence toward that sentence, and Barrett was then paroled to start serving time for the robbery sentence. Barrett failed to demonstrate NDOC erred by doing so. Moreover, because Barrett had already been paroled from the burglary sentence to start serving the robbery sentence when the district court entered the amended judgment of conviction, NDOC's delay in updating Barrett's records in accordance with the amended judgment of conviction did not affect the start date or duration of

¹Nothing in the record before this court indicates Barrett served any part of the enhancement sentence.

Barrett's remaining sentences. Therefore, we conclude the district court did not err by denying the petition.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Kenneth D. Barrett
Attorney General/Carson City
Pershing County Clerk

²The district court concluded Barrett had raised a substantially similar claim in a previous petition and denied this petition as procedurally barred pursuant to NRS 34.810(2). However, Barrett's prior petition was filed in a different district court case, and Barrett raised new grounds for relief in this petition. Therefore, application of NRS 34.810(2) was not appropriate in this case. Nevertheless, because the district court reached the correct result by denying the petition, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).