

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADRIAN MONTALVO MEDINA,
Appellant,
vs.
JERRY HOWELL, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 80608-COA

FILED

SEP 11 2020

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

ORDER OF AFFIRMANCE

Adrian Montalvo Medina appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 21, 2018. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Medina claimed the Legislature should have applied A.B. 510 to crimes that were committed before 1997. It is generally up to the Legislature to determine when laws should be effective. *See Vickers v. Dzurenda*, 134 Nev. 747, 751, 433 P.3d 306, 310 (Ct. App. 2018) (“Legislation must, of necessity, take effect on some specific date.” (quotation marks omitted); *State v. Second Judicial Dist. Court*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (interpreting legislative silence as meaning that the law in effect at the time the crime is committed governs). We therefore conclude Medina was not entitled to relief on this claim.

Medina next claimed the Nevada Department of Corrections (NDOC) failed to apply his 300 days of presentence credit to his sentence for murder and for the associated deadly weapon enhancement. Medina is entitled to have all of his presentence time served credited toward his ultimate sentence. *See NRS 176.055(1); Kuykendall v. State*, 112 Nev. 1285,

1287, 926 P.2d 781, 783 (1996). And it is possible to split the credit among two or more consecutive sentences. *Mays v. Eighth Judicial Dist. Court*, 111 Nev. 1172, 1176-77, 901 P.2d 639, 642 (1995). The district court found NDOC applied the entire 300 days of presentence credit to Medina's murder sentence. This finding is supported by the record on appeal. But because all of Medina's credit was applied to his murder sentence, there was nothing left to apply to his enhancement sentence. We therefore conclude the district court did not err by denying this claim.

To the extent Medina claimed NDOC failed to apply statutory credits to his minimum and maximum sentences for murder with the use of a deadly weapon, these claims also failed. The district court found Medina was convicted for crimes he committed in 1996. This finding is supported by the record before this court. Medina was sentenced pursuant to a statute that specified a minimum term that must be served before he was eligible for parole and, accordingly, was not entitled to the application of credits to his minimum sentences. *See* NRS 193.165(2) (1995); NRS 200.030(4)(b)(2); 209.446(6)(b); *cf. Williams v. State Dep't of Corr.*, 133 Nev. 594, 402 P.3d 1260 (2017) (interpreting virtually identical language in NRS 209.4465(7)(b)). And Medina, whose maximum sentences are life in prison, was not entitled to the application of credits to his maximum sentences. *See Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).¹ We therefore conclude the district court did not err by denying this claim.

Finally, in his informal brief on appeal, Medina contends that the application of NRS 209.4465(8) to his sentences violates the Ex Post Facto Clause and that his deadly weapon enhancement is illegal. These

¹Medina did not contend that NDOC was failing to record the statutory credits as required by *Hunt*. *See id.*

claims were not raised below, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Having concluded Medina is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Adrian Montalvo Medina
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk