

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE JAMES THOMAS, JR.,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN,  
Respondent.

No. 80675-COA

**FILED**

SEP 11 2020

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

*ORDER OF AFFIRMANCE*

Eddie James Thomas, Jr., appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on February 11, 2019.<sup>1</sup> Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Thomas claims the district court erred by denying his claim that the Nevada Department of Corrections (NDOC) failed to timely aggregate his sentences, which caused him to not be able to earn credits toward the minimum term of his first sentence for statutory sexual seduction. The district court determined that Thomas had previously raised this claim in

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<sup>1</sup>Thomas's notice of appeal also states he is appealing from the denial of a "correction for parole eligibility date" document he filed on February 5, 2019. There is no such document filed on February 5, 2019, in the record on appeal, nor is there a denial of such a motion in the record. Therefore, we decline to consider this portion of the appeal.

other petitions and that this claim was previously decided on the merits. Therefore, the district court denied the claim as procedurally barred because it was successive.

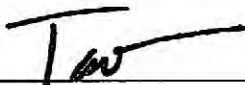
After reviewing the record, we conclude the district court erred by dismissing the petition as procedurally barred. While Thomas raised his untimely aggregation argument previously, it has never been decided on the merits. Therefore, it could not have been procedurally barred as successive. *See* NRS 34.810(2). Nevertheless, we affirm the district court's dismissal of the petition because, as discussed below, the district court reached the correct result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his petition, Thomas argued his sentences should have been aggregated pursuant to NRS 213.1212 when his request to aggregate was sent to prison officials on April 14, 2014. NRS 213.1212 allows a prisoner to elect to aggregate his consecutive sentences. *See* NRS 213.1212(5). However, this statute did not go into effect until July 1, 2014. 2013 Nev. Stat., ch. 64, § 22, at 235. Therefore, Thomas's election in April 2014 was premature and could not have been considered by NDOC until after July 1, 2014. And, because Thomas had been considered for parole from his first sentence before the statute's effective date, NDOC appropriately declined to aggregate that sentence with his other sentences. *See* NRS

213.1212(5)(b). Accordingly, Thomas failed to demonstrate he was entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Jim C. Shirley, District Judge  
Eddie James Thomas, Jr.  
Attorney General/Carson City  
Clerk of the Court/Court Administrator

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<sup>2</sup>We have reviewed all documents Thomas has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Thomas has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.