

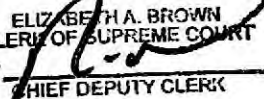
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOE GUTIERREZ PICENO,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 81608-COA

FILED

MAR 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Joe Gutierrez Piceno appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 6, 2019. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

In his petition, Piceno claimed he is entitled to the application of statutory credits to his minimum sentence pursuant to NRS 209.446(6)(b). The district court found Piceno was convicted for crimes he committed in 1996 and is currently serving a sentence of life in prison with eligibility for parole beginning when a minimum of 10 years has been served. These findings are supported by the record before this court. Because Piceno was sentenced pursuant to a statute that specified a minimum term that must be served before he was eligible for parole, *see* 1995 Nev. Stat., ch. 443, § 58, at 1186-87 (formerly NRS 200.366(2)(b)(1)); 1995 Nev. Stat., ch. 455, § 1, at 1431 (formerly NRS 193.165(1)), he was not entitled to the application of credits to his minimum sentences.<sup>1</sup> *See* NRS

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<sup>1</sup>The record before this court shows Piceno has not yet begun to serve his sentence for his conviction of attempted murder with the use of a deadly weapon. Accordingly, this order does not address whether he is entitled to the application of credits to his minimum terms for that conviction.

209.446(6)(b); *cf. Perez v. Williams*, 135 Nev. 189, 191, 444 P.3d 1033, 1034 (2019) (discussing the relationship between the sentences for the primary offense and the attendant deadly weapon enhancement); *Williams v. State Dep't of Corr.*, 133 Nev. 594, 597-600, 402 P.3d 1260, 1262-65 (2017) (interpreting verbiage virtually identical to that of NRS 209.446(6)(b)).

Piceno next claimed the application of NRS 209.446 violated the Equal Protection Clause. This court has addressed a similar claim and found it to lack merit. *See Vickers v. Dzurenda*, 134 Nev. 747, 748-51, 433 P.3d 306, 308-10 (Ct. App. 2018). We therefore conclude the district court did not err by denying this claim.

Piceno next claimed the application of the 2007 amendments to NRS 209.4465 to his sentence violates the Ex Post Facto Clause. NRS 209.4465 does not apply to Piceno's sentence. Rather, as Piceno acknowledged, NRS 209.446 governs the application of credits to his sentence. And because NRS 209.446(6)(b) was enacted before Piceno committed his crimes, its application does not violate the Ex Post Facto Clause. Finally, even if NRS 209.4465 were being applied, Piceno did not explain how its application disadvantaged him. We therefore conclude the district court did not err by denying this claim. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981) (stating the "two critical elements" of an ex post facto law are that the law applies to events occurring before it was enacted and it disadvantaged the petitioner).


In his informal brief on appeal, Piceno contends the district court erred by denying his petition without first conducting an evidentiary hearing. For the reasons discussed above, we conclude Piceno failed to raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. We therefore conclude the

district court did not err by denying Piceno's petition without first conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Finally, Piceno argues on appeal that he is entitled to the application of credits to his maximum sentence. Because he did not raise this argument in the district court, we decline to consider it on appeal in the first instance. *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jim C. Shirley, District Judge  
Joe Gutierrez Piceno  
Attorney General/Carson City  
Clerk of the Court/Court Administrator