

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN JAMES FITZSIMMONS,
Appellant,
vs.
PERRY RUSSELL, WARDEN, WSCC,
Respondent.

No. 82350-COA

FILED

JUL 12 2021

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

ORDER OF AFFIRMANCE

Kevin James Fitzsimmons appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus challenging the computation of time served. First Judicial District Court, Carson City; James E. Wilson, Judge.

In his petition, filed on April 30, 2019, Fitzsimmons first claimed the Nevada Department of Corrections (NDOC) failed to apply statutory credits to his minimum aggregated sentence. The district court found Fitzsimmons was convicted of two counts of burglary, adjudicated a habitual criminal, and sentenced to consecutive terms of 10 to 25 years in prison and 10 years to life in prison. These findings are supported by the record before this court. Fitzsimmons was sentenced pursuant to a statute that provided for "eligibility for parole beginning when a minimum of 10 years has been served." NRS 207.010(1)(b)(2), (3). Because he was sentenced pursuant to a statute that specified a minimum sentence that must be served before he becomes eligible for parole, Fitzsimmons was precluded from the application of credits to his minimum sentence. See NRS 209.4465(7)(b) (providing for application of credits "to eligibility for parole unless the offender was sentenced pursuant to a statute which

specifies a minimum sentence that must be served before a person becomes eligible for parole”); *Williams v. State Dep’t of Corr.*, 133 Nev. 594, 597-99, 402 P.3d 1260, 1263-64 (2017). We therefore conclude the district court did not err by denying this claim.

Fitzsimmons next claimed NDOC failed to apply statutory credits to his maximum term of 25 years in prison. An offender is entitled to the application of statutory credits to his maximum term of imprisonment. NRS 209.4465(7)(a). When a prisoner has chosen to have his sentences aggregated, his credits are applied to the maximum aggregate term of imprisonment. NRS 213.1212(4). Fitzsimmons chose to aggregate his sentences. Because his aggregated term is 20 years to life in prison, Fitzsimmons was not entitled to the application of statutory credits to his maximum sentence. *See Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (“[T]he legislature did not intend good time credit to be applied to a sentence of life in prison.”). Accordingly, we conclude the district court did not err by denying this claim.¹


Finally, Fitzsimmons claimed the failure to apply statutory credits to his minimum and maximum terms violated the Equal Protection Clause. In support, Fitzsimmons points to an inmate whom he alleges is similarly situated and who was granted relief on a similar claim. The Equal Protection Clause guarantees that laws will treat similarly situated people similarly. *See Vickers v. Dzurenda*, 134 Nev. 747, 748-49, 433 P.3d 306, 308 (Ct. App. 2018). It does not guarantee uniformity of court decisions or insure against judicial error. *See Beck v. Washington*, 369 U.S. 541, 554-55 (1962); *cf. Little v. Crawford*, 449 F.3d 1075, 1082 (9th Cir. 2006) (“Little’s

¹The district court found NDOC was properly tracking Fitzsimmons’ statutory credit, and Fitzsimmons does not challenge this finding on appeal.

claim, at most, amounts to an allegation that in his case Nevada law was misapplied or that the Nevada Supreme Court departed from its earlier decisions. Under clearly established Supreme Court law, such contention neither gives rise to an equal protection claim, nor provides a basis for habeas relief.”). That one inmate may have obtained relief in contravention of clear statutory language does not entitle every other similarly situated inmate to obtain the same relief. Accordingly, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Kevin James Fitzsimmons
Attorney General/Carson City
Carson City Clerk

²To the extent Fitzsimmons attempts to raise new arguments in his informal brief, we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).