

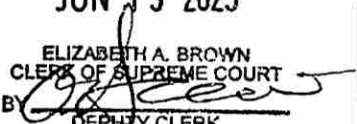
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMARTICE WRIGHT A/K/A
KEYVONTE KEYA LAY,
Appellant,
vs.
PERRY RUSSELL, WARDEN,
Respondent.

No. 85402-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

LaMartice Wright appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 28, 2022. First Judicial District Court, Carson City; James E. Wilson, Judge.

Wright argues that the district court erred by denying his petition. In his petition, Wright requested retroactive aggregation of all of the sentences imposed in district court case no. C271785-1. Pursuant to NRS 213.1212(5), a prisoner may request aggregation of certain eligible sentences. However, the Nevada Department of Corrections (NDOC) is only permitted to aggregate “the sentences for which parole has not been considered.” NRS 213.1212(5)(b). Moreover, after a petitioner has expired his sentences, “any question as to the method of computing those sentences [is] rendered moot,” and “[n]o recomputation of the time served on those

sentences” can be made. *Johnson v. Dir., Nev. Dep’t of Prisons*, 105 Nev. 314, 316 & n.4, 774 P.2d 1047, 1049 & n.4 (1989).

In district court case no. C271785-1, Wright was convicted of conspiracy to commit robbery (count 1), robbery with the use of a deadly weapon (count 2), battery with the use of a deadly weapon (count 3), and battery with the intent to commit a crime (count 4). Wright already expired his sentences for count 1 and count 4. In addition, Wright already received a parole hearing regarding his sentence for the primary offense in count 2 and had not yet started to serve his sentence for count 3. Because Wright has already expired his sentences for counts 1 and 4, any question regarding the computation of those sentences was rendered moot, and no recomputation of those sentences was permitted. Moreover, because Wright has already had a parole hearing regarding the sentence for the primary offense of robbery in count 2, NDOC is not permitted to aggregate that sentence with any of Wright’s other sentences.

Wright contends on appeal that *Johnson* is inapplicable because it solely addressed the question of whether *Niergarth v. Warden*, 105 Nev. 26, 768 P.2d 882 (1989), should be applied retroactively. Wright is mistaken. The appellant in *Johnson* sought to retroactively amend the aggregated state of his sentences by arguing they should not have been aggregated. *Id.* at 316, 774 P.2d at 1049. Wright similarly sought to amend the state of his sentences, albeit by arguing his sentences should have been aggregated. Wright does not demonstrate that this difference renders *Johnson* inapplicable.

Wright also contends that the district court erred by relying on *Williams v. State Dep't of Corr.*, 133 Nev. 594, 402 P.3d 1260 (2017). The district court cited *Williams* in support of the statement that the court could not grant relief on sentences for which Wright has already been considered for parole. Assuming without deciding that this was error, Wright would not be entitled to relief. As discussed above, NDOC may only aggregate sentences for which parole has not been considered.

Finally, Wright contends that he is entitled to relief based upon equitable considerations: The sentencing courts were not aware of how NDOC would calculate Wright's time, and NDOC did not inform Wright of the possibility of aggregating his sentences at an earlier time. The sentencing courts' understanding of sentence calculations would not entitle Wright to relief. *Cf. State ex rel. Dep't of Prisons v. Kimsey*, 109 Nev. 519, 522, 853 P.2d 109, 111 (1993) (explaining that a district court's "misapprehensions about the legal consequences of a defendant's sentence," including the parole consequences of a defendant's sentence structure, do not grant it jurisdiction to modify a sentence). And aggregation pursuant to NRS 213.1212 became available to Wright in 2014. *See* 2013 Nev. Stat., ch. 64, § 22, at 235 (stating the July 1, 2014, effective date of NRS 213.1212). Since that time, Wright has expired terms and was granted parole on an additional term. In light of the foregoing, Wright did not demonstrate that equitable considerations outweigh his lengthy delay in pursuing relief.

For the foregoing reasons, we conclude that the district court did not err by denying Wright's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. James E. Wilson, District Judge
Federal Public Defender/Las Vegas
Attorney General/Las Vegas
Carson City Clerk

¹The district court also concluded that Wright was not entitled to relief pursuant to NRS 213.1213(b). However, NRS 213.1213(b) was not applicable to Wright because that provision only applies to sentences involving life in prison with the possibility of parole, and Wright was not serving such a sentence. Nevertheless, for the reasons stated above, we affirm the district court's decision to deny relief. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on an incorrect ground).