

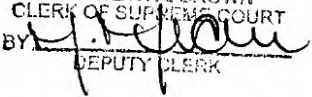
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JORGE WITRAGO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86900-COA

**FILED**

APR 05 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jorge Witrigo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 14, 2023. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Witrigo claimed he is entitled to the application of statutory credits to his minimum sentence for his deadly weapon enhancement pursuant to NRS 209.4465(7)(b). The district court found Witrigo was convicted of second-degree murder with the use of a deadly weapon, which he committed in April 2007. These findings are supported by the record before this court.

At the time Witrigo committed his crimes, NRS 209.4465(7)(b) allowed for the application of statutory credits to minimum sentences only where the offender was not "sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible

for parole.” 2003 Nev. Stat., ch. 259, § 13, at 1368.<sup>1</sup> Also during that time frame, the relevant sentencing statute for purposes of NRS 209.4465(7)(b) for a deadly weapon enhancement pursuant to NRS 193.165(1), “is the one that prescribed the sentence for the primary offense.” *Perez v. Williams*, 135 Nev. 189, 191, 444 P.3d 1033, 1034 (2019).

Witrigo was sentenced for the deadly weapon enhancement pursuant to NRS 193.165, which, at the time he committed his crime, required “a term equal to and in addition to the term of imprisonment prescribed by statute for the crime.” 1995 Nev. Stat., ch. 455, § 1, at 1431. The punishment for second-degree murder provided for life with the possibility of parole or a definite term of 25 years in prison, both with “eligibility for parole beginning when a minimum of 10 years has been served.” 2003 Nev. Stat., ch. 470, § 4, at 2945. Thus, the relevant sentencing statute specified a minimum sentence that must be served before Witrigo became eligible for parole. Accordingly, Witrigo was not entitled to the application of statutory credits to his minimum sentence. See *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.

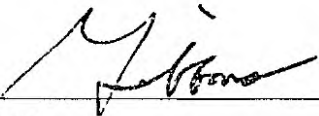
On appeal, Witrigo claims the district court erred by denying his petition without allowing him sufficient time to reply to the State’s

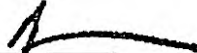
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<sup>1</sup>Witrigo’s argument focused on the language in his judgment of conviction that imposed the sentence. However, “the language in the judgment of conviction is not relevant in determining whether the limiting language in NRS 209.4465(7)(b) applies.” *Williams v. State Dep’t of Corr.*, 133 Nev. 594, 597 n.3, 402 P.3d 1260, 1263 n.3 (2017).

response to his petition. Because the State did not move to dismiss his petition, Witrago was not allowed to file any additional pleadings without further order from the district court. *See* NRS 34.750(5). The district court did not order that he could file additional pleadings. Therefore, we conclude Witrago failed to demonstrate the district court erred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Erika D. Ballou, District Judge  
Jorge Witrago  
Attorney General/Carson City  
Clark County District Attorney  
Attorney General/Las Vegas  
Eighth District Court Clerk