

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Peter J. Helfrich,

5 Petitioner

6 v.

7 D.W. Neven, et al.,

8 Respondents

2:16-cv-01499-JAD-VCF

Order Granting Application to Proceed
in forma pauperis, Denying Petition and
Motion for Appointment of Counsel,
and Closing Case

[ECF Nos. 1, 2]

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10 Nevada state prison inmate Peter J. Helfrich has submitted an application to proceed *in forma*
11 *pauperis*, a petition for habeas corpus, and an ex parte motion for appointment of counsel.
12 Helfrich's IFP application and supporting documentation show that he is unable to pay the filing fee,
13 so I grant his application to proceed *in forma pauperis*, direct the Clerk of Court to file and serve it
14 on respondents, and screen his petition under Rule 4 of the Rules Governing Section 2254 Cases in
15 the United States District Courts. Because it plainly appears from the face of the petition that
16 Helfrich is not entitled to relief, I deny the petition and decline to issue a certificate of appealability,
17 deny his motion for appointment of counsel as moot, and close this case.

18 **Background**

19 Helfrich challenges the calculation of his good-time credits under NRS § 209.4465. I take
20 judicial notice of another habeas action filed by Helfrich in this court, Case No. 2:16-cv-00312-RFB-
21 NJK, including the state-court record exhibits attached to the petition in that case.¹ These records
22 show that in August 2013, Helfrich pleaded guilty to voluntary manslaughter for a killing that
23 occurred seven months earlier; he was sentenced to 48–120 months in prison.

24 In his sole ground for relief, Helfrich alleges that credits toward his sentence are not being
25 applied to reduce his minimum term of imprisonment as required under NRS §209.4465. Helfrich is
26 incorrect. The version of NRS §209.4465 that was in effect when Helfrich committed the offense for
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28 ¹ *Helfrich v. State of Nevada*, Case No. 2:16-cv-00312-RFB-NJK, ECF No. 1-5 at 49–55.

1 which he is in prison provided that any credits must be deducted from the maximum term imposed
2 by the sentence—not the minimum—and they do not apply to eligibility for parole.²

3 Helfrich’s citation to the Nevada Supreme Court’s unpublished decision in *Vonseydewitz v.*
4 *Legrand*³ is unpersuasive. Vonseydewitz committed his crimes between May 1, 1996, and August
5 31, 2006—before the version of NRS §209.4465 that Helfrich was sentenced under took effect on
6 October 1, 2007. The version that applied to Vonseydewitz did not contain subsection 8, which
7 prohibits credits earned by an offender who has been convicted of a category A or B felony from
8 applying to eligibility for parole or from being deducted from the minimum term imposed by a
9 sentence before parole eligibility.⁴ None of the Nevada Supreme Court’s reasons for holding that
10 Vonseydewitz was entitled to a deduction from his minimum sentence apply to Helfrich because
11 § 209.4465(8) was part of the statute when Helfrich committed his crime. That provision bars
12 application of credits to the minimum term of Helfrich’s sentence for a category B felony. Helfrich’s
13 sole ground for relief thus fails on its face, so I deny his petition and his motion for appointment of
14 counsel. And because reasonable jurists would not find my conclusion debatable or wrong, I
15 decline to issue him a certificate of appealability.

16 Conclusion

17 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Helfrich’s
18 application to proceed *in forma pauperis* [ECF No. 1] is **GRANTED**.

19 The Clerk of Court is directed to FILE the petition [ECF No. 1-1], add Adam Paul Laxalt,
20 Attorney General for the State of Nevada, as counsel for respondents, and electronically **SERVE** on
21 respondents a copy of the petition and this order. Respondents need not file a response.

22 IT IS FURTHER ORDERED that the petition for a writ of habeas corpus [ECF No. 1-1] is
23 **DENIED**, and I decline to issue a certificate of appealability.

24 IT IS FURTHER ORDERED that Helfrich’s ex parte motion for appointment of counsel

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26 ² NEV. REV. STAT. §209.4465 (2007).

27 ³ *Vonseydewitz v. Legrand*, 2015 WL 3936827 (Nev. June 24, 2015).

28 ⁴ *Vonseydewitz*, 2015 WL 3936827, at *2–3.

1 **[ECF No. 2] is DENIED as moot.**

2 The Clerk of Court is directed to CLOSE THIS CASE.

3 Dated: November 1, 2016.

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5 Jennifer A. Dorsey
6 United States District Judge
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