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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-17332
D.C. No. 2:19-cv-01044-GMN-EJY

[Filed April 25, 2023]

PHILIP ROY GALANTI, *Plaintiff-Appellant*,	)
v.	)
NEVADA DEPARTMENT OF CORRECTIONS; CLARK COUNTY SCHOOL DISTRICT; JAMES DZURENDA, Director; BRIAN WILLIAMS, Warden, Warden; MOORE, Caseworker; RITZ, Caseworker; NASH, Associate Warden; KIM PETERSON, NDOC Administrator; J. CAVIN, School Counselor; ROLAND; HOWELL, *Defendants-Appellees*.	)

App. 2

OPINION

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Argued and Submitted March 28, 2023
San Francisco, California

Filed April 25, 2023

Before: MILAN D. SMITH, JR. and JOHN B. OWENS, Circuit Judges, and XAVIER RODRIGUEZ,[*] District Judge.

Opinion by Judge Milan D. Smith, Jr.

SUMMARY[**]

Prisoner Civil Rights

The panel affirmed in part and reversed in part the district court's dismissal of an action brought pursuant to 42 U.S.C. § 1983 against the Nevada Department of Corrections and several Department officials alleging that they violated plaintiff's constitutional rights by failing to deduct education-credits he earned from his sentence, and remanded.

While incarcerated, plaintiff completed several education courses which entitled him to sentence

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[*] The Honorable Xavier Rodriguez, United States District Judge for the Western District of Texas, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

deductions under Nevada law. After he was released and his parole ended, plaintiff sued, asserting that defendants' failure to apply earned credit-deductions to his sentence deprived him of liberty without due process and denied him equal protection of the law by targeting him for the denial of credits because he is a sex offender.

The panel first rejected defendants' argument that plaintiff's claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because they necessarily implied that the duration of his sentence was invalid. The panel held that *Heck* did not apply in this case. Plaintiff was no longer in custody and was thus unable to raise claims for credit-deductions in a petition for habeas corpus. As such, this case fell within the limited exception to *Heck* this court recognized in *Nonnette v. Small*, 316 F.3d 872, 875–76 (9th Cir. 2002).

The panel held that the district court erred by interpreting plaintiff's due process claim as asserting only a deprivation of minimum-sentence deductions affecting his parole eligibility date and ignoring his claim for maximum-sentence deductions. Despite being instructed to brief the issue, defendants did not respond to plaintiff's argument that Nev. Rev. Stat. § 209.4465 contains the mandatory language necessary to create a constitutionally protected liberty interest in maximum-sentence deductions, similar to good-time statutes this court previously found to create liberty interests. Accordingly, the panel reversed and remanded with respect to plaintiff's due process claim.

The panel affirmed the dismissal of the equal protection claim because plaintiff had not alleged facts supporting discrimination.

COUNSEL

Rizelle Dizon (argued) and Justine Chang, Certified Law Students; Leah Spero, Gary A. Watt, and Stephen Tollafield, Supervising Attorneys; University of California, Hasting College of the Law, Hastings Appellate Project; San Francisco, California; for Plaintiff-Appellant.

Sabrena K. Clinton (argued), Deputy Attorney General; Gregory L. Zunino, Deputy Solicitor General; Frank A. Toddre II, Senior Deputy Attorney General; D. Randall Gilmer, Chief Deputy Attorney General; Aaron D. Ford, Attorney General of Nevada; Office of the Nevada Attorney General; Las Vegas, Nevada; Patrick J. Murch, McDonald Carano LLP, Las Vegas, Nevada; for Defendants-Appellees.

OPINION

M. SMITH, Circuit Judge:

Philip Roy Galanti sued the Nevada Department of Corrections (NDOC) and several NDOC officials pursuant to 42 U.S.C. § 1983, claiming that they violated his constitutional rights by failing to deduct education-credits he earned from his sentence. Defendants argue that Galanti's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because they necessarily imply that the duration of his sentence was invalid.

We hold that *Heck* does not apply in this case. Galanti is no longer in custody and is thus unable to raise claims for credit deductions in a petition for habeas corpus. As such, this case falls within the limited exception to *Heck* we recognized in *Nonnette v. Small*, 316 F.3d 872, 875–76 (9th Cir. 2002). Because *Heck* does not bar this lawsuit, we reverse and remand with respect to Galanti's due process claim, which the district court misconstrued as challenging only the denial of credit-deductions from his parole date. We affirm the dismissal of the equal protection claim, as Galanti failed to allege discrimination.

BACKGROUND

Philip Roy Galanti is a former Nevada state prisoner. While incarcerated, he completed several education courses, which entitled him to sentence deductions under Nevada law. He alleges that, with the deductions he earned from obtaining his high school diploma and two vocational certificates, his sentence should have expired on June 1, 2018. However, because NDOC officials did not apply the deductions, his sentence did not expire until August 22, 2018.

After he was released and his parole ended, Galanti sued NDOC and several NDOC officials pro se. In his First Amended Complaint (FAC), Galanti raises two claims. First, he asserts that Defendants' failure to apply earned credit-deductions to his sentence deprived him of liberty without due process. Second, he claims Defendants denied him equal protection of the law by targeting him for the denial of credits because he is a sex offender. Galanti alleges that NDOC officials failed to rectify the situation despite his complaints while he

was still incarcerated and complaints from his mother. He further alleges they denied him access to his credit and sentence reports, which prevented him from verifying his credit calculations while incarcerated.[1]

Defendants moved to dismiss, arguing that Galanti failed to state any constitutional violations, *Heck* bars his claims, qualified immunity shields the officer-defendants from liability, and NDOC is not a proper party. The district court granted the motion. Construing Galanti's due process claim as being based on the failure to apply credit-deductions to his "minimum sentence," or parole eligibility date, the district court dismissed the claim with prejudice on the ground that Nevada law does not create a constitutionally protected liberty interest in parole. The court dismissed the equal protection claim for failure to plead discrimination and declined to reach the remaining issues.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a decision on a motion to dismiss for failure to state a claim de novo, accepting the allegations in the complaint as true and viewing them in the light most favorable to the plaintiff. *Gonzalez v. Google LLC*, 2 F.4th 871, 885 (9th Cir. 2021). Pro se pleadings are

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[1] The FAC also contains an equal protection claim based on allegations that Defendants awarded fewer discretionary credits to inmate students compared to inmate workers, as well as Fourth, Fifth, and Eight Amendment claims, which are not at issue in this appeal.

construed liberally. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

ANALYSIS

Although the district court did not reach the issue, Defendants assert that all of Galanti's claims are barred by *Heck* because a judgment in his favor would necessarily imply the invalidity of the duration of his sentence. Galanti argues that his claims fall under an exception to *Heck* recognized by our court in *Nonnette* because he is no longer incarcerated and thus cannot bring his claim for credit deductions in a habeas petition. Defendants contend that *Nonnette* is inapplicable because Galanti did not timely pursue habeas relief while in custody.

Apart from *Heck*, Galanti argues that the district court misconstrued his due process claim as challenging the denial of *minimum*-sentence deductions—in which he concedes that he lacks a liberty interest—and ignored his interest in *maximum*-sentence deductions. With respect to his equal protection claim, Galanti argues that he sufficiently alleged discrimination. Defendants endorse the district court's analysis of both claims. We address each argument in turn.

I. *Heck v. Humphrey* Does Not Bar Galanti's Claims

In *Heck*, the Supreme Court held that to recover damages pursuant to § 1983 for an unconstitutional conviction or sentence, the plaintiff "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid

by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. at 486–87. If a "judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence" and that conviction or sentence has not been invalidated, the claim is not cognizable under § 1983. *Id.* at 487. The Court has since clarified that the *Heck* rule applies to claims for unconstitutional deprivation of good-time credits, if a favorable judgment would imply the invalidity of such deprivation. *See Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

After *Heck*, five Justices in *Spencer v. Kemna*, 523 U.S. 1 (1998), "suggested that *Heck*'s scope might be narrower than *Heck* itself indicated." *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1190 (9th Cir. 2015). The Court held that, while an ex-prisoner's habeas petition challenging his underlying conviction does not become moot upon his release due to the continuing consequences of a criminal record, the petitioner's challenge to his parole revocation was mooted by his release from custody. *See Spencer*, 523 U.S. at 7–13. But five Justices noted that the petitioner *could* bring such a claim under § 1983 without satisfying *Heck*'s favorable-termination requirement, as "it would be impossible as a matter of law for him to satisfy" that requirement due to the unavailability of habeas relief. *Id.* at 21 (Souter, J., concurring); *see id.* at 25 n.8 (Stevens, J., dissenting); *see also Guerrero v. Gates*, 442 F.3d 697, 704 (9th Cir. 2006) ("The *Spencer* concurrence suggests that a plaintiff's inability to pursue habeas relief after release from incarceration should create an exception to *Heck*'s bar.").

Then in *Nonnette*, we applied this reasoning in holding that *Heck* did not preclude an ex-prisoner's § 1983 claim challenging denial of good-time credits because he could no longer bring that claim in a habeas petition. *See* 316 F.3d at 875–76. Nonnette filed his § 1983 suit while in custody, alleging that prison officials miscalculated his sentence and unlawfully revoked his credits. *Id.* at 874. The district court dismissed pursuant to *Heck* because a judgment in Nonnette's favor would imply the invalidity of his sentence. *Id.* After that decision was entered, he was released from custody. *Id.* at 875. We reasoned that because Nonnette's release rendered habeas relief unavailable under *Spencer*, his § 1983 action could be maintained. *See id.* at 875–76. We also "emphasize[d] that [the] holding affects only former prisoners challenging loss of good-time credits, revocation of parole or similar matters"—not challenges to underlying convictions, because ex-prisoners continue to be able to challenge their underlying convictions in habeas after their release. *Id.* at 878 n.7 (citing *Spencer*, 523 U.S. at 7–12); *see also Lyall*, 807 F.3d at 1192 (holding that the plaintiff's claim "d[id] not come within the narrow exception recognized in *Spencer* and *Nonnette*" because it challenged his underlying conviction).

We have since recognized potential limits to *Nonnette*. In *Guerrero*, we held that *Heck* barred the plaintiff's § 1983 suit even though he was no longer in custody and habeas relief was unavailable, distinguishing the case from *Nonnette* on two grounds. *See* 442 F.3d 702–05. First, Guerrero's claims attacked his conviction, not "loss of good-time credits, revocation

of parole or similar matters," and thus they were plainly outside *Nonnette*'s purview. *Id.* at 705 (quoting *Nonnette*, 316 F.3d at 878 n.7). Second, Guerrero did not "*timely* pursue[] appropriate relief." *Id.* (emphasis added). We noted that the plaintiff in *Nonnette* "immediately pursued relief after the incident giving rise to [his] claims and could not seek habeas relief only because of the shortness of his prison sentence." *Id*. In contrast, Guerrero waited three years to file suit, allowing the statute of limitations on his habeas claim to expire. *Id.*; *see* 28 U.S.C. § 2244(d)(1) (establishing one-year deadline for filing federal habeas corpus petitions). As such, "[h]is failure to timely achieve habeas relief [wa]s self-imposed" and not a reason for him to avoid the *Heck* bar. *Guerrero*, 442 F.3d at 705.

This case is much more like *Nonnette* than *Guerrero*. First, Galanti challenges the deprivation of credit-deductions, not his underlying sentence. Second, to the extent that *Guerrero* imposes a diligence requirement on § 1983 plaintiffs under *Nonnette*, it does not bar Galanti's claim. Given the timeline Galanti alleges, he had little time to obtain habeas relief. Galanti earned the credits at issue on April 1, 2018, he was released on June 1, 2018, and his parole expired on August 22, 2018, giving him only a few months during which he could have filed a habeas petition. And if his sentence expired during the pendency of his case, which is very likely given the timeframe, it would have been dismissed as moot. This differs from the situation in *Guerrero*, in which the plaintiff allowed the habeas statute of limitations to lapse and then attempted to "use his failure to timely pursue habeas remedies as a shield against the

implications of *Heck*." *Id.* at 705 (cleaned up). Moreover, Galanti alleges that he made complaints and took other efforts to rectify the situation while in custody, unlike Guerrero, who waited years before taking "any action at all." *Id.* Accordingly, *Heck* does not bar this suit.

II. The District Court Erred by Ignoring Galanti's Due Process Claim for Maximum-Sentence Deductions

The district court dismissed Galanti's claims on grounds other than *Heck*, which we now address. Galanti argues that the court misconstrued his due process claim as asserting the deprivation of deductions to his minimum sentence alone and ignored his claim related to maximum-sentence deductions. Nevada prisoners are generally sentenced to a minimum term, after which they are eligible for parole, and a maximum term, after which they are released if incarcerated or their parole expires. *See* Nev. Rev. Stat. §§ 213.120(2), 213.1215. The district court interpreted Galanti's FAC as asserting "that the NDOC Defendants failed to apply the good-time credits that he earned by attending educational classes to his parole eligibility date," or minimum sentence, "which extended his period of incarceration without due process." The court did not consider whether Galanti stated a claim for deprivation of maximum-sentence deductions.

Galanti now concedes that, to the extent his FAC asserts a claim for minimum-sentence deductions, that claim fails because Nevada prisoners do not have a liberty interest in parole, *see Moor v. Palmer*, 603 F.3d 658, 661–62 (9th Cir. 2010), and he is not statutorily

eligible for such deductions in any event because he has been convicted of a felony sex crime.[2] However, he argues that his FAC also contains a due process claim for deprivation of *maximum*-sentence deductions, in which he has a liberty interest and for which he was eligible, and the district court erred by ignoring that claim.

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[2] Under Nevada law, all prisoners are eligible for maximum-sentence deductions, but those convicted of certain enumerated offenses including felony sex crimes—like Galanti—are ineligible for minimum-sentence deductions. *See* Nev. Rev. Stat. § 209.4465. The relevant provisions provide that:

> 7. Except as otherwise provided in subsection[] 8 … credits earned pursuant to this section:
>
> > (a) Must be deducted from the maximum term or the maximum aggregate term imposed by the sentence, as applicable; and
> >
> > (b) Apply 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.
>
> 8. Credits earned pursuant to this section by an offender who has not been convicted of:
>
> > …
> >
> > (b) A sexual offense that is punishable as a felony;
> >
> > …,
>
> apply to eligibility for parole and … must be deducted from the minimum term or the minimum aggregate term imposed by the sentence, as applicable, until the offender becomes eligible for parole and must be deducted from the maximum term or the maximum aggregate term imposed by the sentence, as applicable.

Construed liberally, Galanti's FAC contains a claim for deprivation of maximum-sentence deductions. He alleges that his sentence "should have *expired* on or about June 1st, 2018 [rather than August 22, 2018], and he *should not have had to be on parole for 2 months* and bear costs associated with it"—referencing his maximum sentence. In his response to Defendants' Motion to Dismiss, Galanti continued to assert that he was entitled to deductions from his "maximum term" and that his sentence should have "expired" earlier. Moreover, throughout his filings, Galanti referenced Nev. Rev. Stat. § 209.4465, which addresses both types of deductions. Accordingly, the district court erred by interpreting Galanti's due process claim as asserting only deprivation of minimum-sentence deductions and ignoring his claim for maximum-sentence deductions.

Defendants' remaining arguments related to due process are premised on the district court's erroneous interpretation and do not address maximum-sentence deductions. Despite being instructed by our court to brief the issue, Defendants do not respond to Galanti's argument that Nev. Rev. Stat. § 209.4465 contains the mandatory language necessary to create a constitutionally protected liberty interest in maximum-sentence deductions, similar to good-time statutes we have previously found to create liberty interests. *See Bergen v. Spaulding*, 881 F.2d 719, 721 (9th Cir. 1989) (holding Washington statute creates liberty interest); *McFarland v. Cassady*, 779 F.2d 1426, 1428 (9th Cir. 1986) (same for similar Arizona statute). Rather, Defendants argue that Galanti did not have a liberty interest in *parole*, which he does not dispute and is irrelevant to his maximum-sentence claim in

any event.[3] Similarly, Defendants argue that Galanti is not statutorily eligible for deductions to his parole date, which is neither disputed nor relevant.[4] Accordingly, we reverse and remand with respect to Galanti's due process claim.

III. Galanti Failed to State an Equal Protection Claim

Finally, Galanti claims that Defendants violated the Equal Protection Clause by treating him less favorably with respect to applying credit-deductions due to animus against sex offenders. This claim fails because Galanti has not alleged facts supporting discrimination. *See Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017) ("To prevail on an Equal Protection claim, plaintiffs must show that a class that is similarly situated has been treated disparately." (cleaned up)). He asserts that Defendants did not apply deductions to his sentence "in a manner equal to the deductions given to various other inmate[s]" because Defendants "'hate' sex offenders." But this conclusory statement does not support his claim. *See Ventura Mobilehome Comms. Owners Ass'n v. City of San Buenaventura*, 371 F.3d 1046, 1055 (9th Cir. 2004) (affirming dismissal of equal protection

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[3] Relatedly, Defendants argue that the officer-defendants are entitled to qualified immunity because "Nevada law does not provide inmates with a clearly established liberty interest in *parole eligibility*," which is also irrelevant to Galanti's maximum-sentence deductions claim.

[4] In their Supplemental Answering Brief, Defendants concede that Galanti is eligible for *maximum*-sentence deductions.

claim because "[a]side from conclusory allegations, Appellant has not . . . alleged how [similarly situated individuals] are treated differently").

CONCLUSION

For these reasons, the district court's decision granting Defendants' motion to dismiss is **AFFIRMED** in part, **REVERSED** in part, and **REMANDED**.[5]

[5] In light of the issues in this case, the district court should carefully consider appointing counsel for Galanti in future proceedings.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 2:19-cv-01044-GMN-EJY

[Filed October 27, 2020]

PHILIP ROY GALANTI,
Plaintiff,

vs.

NEVADA DEPT. OF CORRECTIONS, *et al.*,
Defendants.

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 22), filed by Defendants Nevada Department of Corrections ("NDOC"), James Dzurenda, Brian Williams, Alessia Moore, Jennifer Nash, Kim Peterson, and Anthony Ritz, (collectively, "NDOC Defendants"). Pro se Plaintiff Philip Roy Galanti ("Plaintiff") filed a Response, (ECF No. 30), and the NDOC Defendants filed a Reply, (ECF No. 31).

Also pending before the Court is Defendant Clark County School District's ("CCSD's") Motion to Dismiss, (ECF No. 24). Plaintiff did not file a Response.

Also pending before the Court is Plaintiff's Motion for Ruling, (ECF No. 34), on NDOC Defendants' Motion to Dismiss.

Also pending before the Court is NDOC Defendants' Motion to Stay Discovery, (ECF No. 44).

For the reasons discussed below, the Court **GRANTS** the NDOC Defendants' Motion to Dismiss, **GRANTS** CCSD's Motion to Dismiss, and **DENIES** Plaintiff's Motion for Ruling and NDOC Defendants' Motion to Stay Discovery as moot.

I. BACKGROUND

This is a civil rights case arising under 42 U.S.C. § 1983 with Plaintiff alleging that Defendants unduly delayed his release on parole and extended his sentence in violation of his constitutional rights. (*See generally* First Am. Compl. ("FAC"), ECF No. 21). Plaintiff was formerly an inmate at High Desert State Prison ("HDSP") who was paroled on June 1, 2018. (FAC at 1, 10). Plaintiff commenced this action on June 18, 2019, alleging violations of his Fourteenth Amendment due process and equal protection rights, as well as Fourth, Fifth, and Eighth Amendment claims against the NDOC, CCSD, NDOC Director James Dzurenda, Warden Brian Williams, Associate Warden Jennifer Nash, NDOC Administrator Kim Peterson, and HDSP caseworkers Alessia Moore and Anthony Ritz, (collectively, "Defendants"). (Compl. at 2–3, 6–8, ECF No. 1). On December 19, 2019, Plaintiff filed his First Amended Complaint, alleging the same. (*See generally* FAC).

In his First Amended Complaint, Plaintiff claims that Defendants failed to apply the good-time education credits that he earned pursuant to NRS 209.4465 to his minimum sentence and parole eligibility dates, resulting in an extended period of incarceration. (*Id.*). Plaintiff calculates that he is owed "approximately 40 days" under NRS 209.4465(2), which awards "10 days of credit each month for an offender whose diligence in labor and study merits such credit." (*Id.* at 8). Plaintiff claims an additional 150 days, supposedly under NRS 209.4465(2)(a)–(b), for receiving his high school diploma and completing a vocational course. *See* NRS 209.4465(2)(a)–(b) (awarding offenders 90 days of good time credits for receiving their high school diploma, and 60 days for vocational courses); (*Id.* at 6). Therefore, Plaintiff asserts that he should have been released on parole around April 10, 2018, and that his sentence should have expired on June 1, 2018. (*Id.* at 6). Instead he was paroled on June 1, 2018, and his sentence expired in August of 2018. (*Id.* at 10).

II. LEGAL STANDARD

Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6) where a pleader fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on which it rests, and although a court must take all factual allegations as true, legal conclusions couched as a factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, Rule 12(b)(6) requires "more than labels and conclusions, and a formulaic recitation of the elements

of a cause of action will not do." *Id.* "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

If the court grants a motion to dismiss for failure to state a claim, leave to amend should be granted unless it is clear that the deficiencies of the complaint cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Pursuant to Rule 15(a), the court should "freely" give leave to amend "when justice so requires," and in the absence of a reason such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

III. DISCUSSION

In their Motion to Dismiss, the NDOC Defendants allege that Plaintiff fails to state a claim upon which relief can be granted. (NDOC Mot. Dismiss ("NDOC MTD") 1:24, ECF No. 22). The NDOC Defendants assert several reasons for dismissal, such as: Plaintiff cannot sue the NDOC or the NDOC Defendants in

their official capacity for damages under 42 U.S.C. § 1983, Plaintiff's claims are barred by *Heck v. Humphry*, 512 U.S. 477 (1994), and Plaintiff failed to state Fourteenth Amendment due process and equal protection claims under Fed. R. Civ. P. 12(b)(6). (NDOC MTD 3:18 –19, 4:1–2, 4:14, 5:20, 6:8). In its Motion, CCSD incorporates the arguments in the NDOC Defendants' Motion and further claims that CCSD has no authority over the application of education credits to Plaintiff's sentence or his alleged extended incarceration. (*See generally* CCSD Mot. Dismiss "CCSD MTD," ECF No. 24). The Court first addresses whether Plaintiff's allegations can support a Fourteenth Amendment claim.

A. Due Process

Plaintiff claims that the NDOC Defendants failed to apply the good-time credits that he earned by attending educational classes to his parole eligibility date, which extended his period of incarceration without due process. (FAC at 5–6). To state a Fourteenth Amendment due process claim, a plaintiff must adequately allege that he was denied a specific liberty interest and that he was deprived of that liberty interest without the constitutionally required procedures. *See Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). Allegations that a defendant misapplied state law are not sufficient to state a claim for violating the Fourteenth Amendment's due process clause. *Id.* at 222 (holding that a "mere error of state law is not a denial of due process").

In Nevada, state prisoners do not have a liberty interest in parole or parole eligibility. *See Moor v.*

Palmer, 603 F.3d 658, 661–62 (9th Cir. 2010); *Fernandez v. Nevada*, No. 3:06-CV-00628-LRH-RAM, 2009 WL 700662, at *10 (D. Nev. June 4, 2012). Additionally, there is no liberty interest in prison education or rehabilitation classes. *See Hernandez v. Johnson*, 833 F.2d 1316, 1319 (9th Cir. 1987). Plaintiff bases his due process claim on the fact that Defendants failed to apply good-time education credits to his parole eligibility date. (FAC at 5–6). As such, the Court finds that Plaintiff fails to state a colorable due process claim because he does not claim the deprivation of a liberty interest. Further, Defendants alleged failure to comply with NRS 209.4465 is an error of state law, and thus cannot be the proper basis for a due process claim. *See Young v. Williams*, No. 2:11-CV-01532-KJD, 2012 WL 1984968, at *3 (D. Nev. June 4, 2012) (holding that alleged error in applying good-time credits was an error of state law that did not constitute a due process violation). Therefore, the Court dismisses Plaintiff's due process claim with prejudice.

B. Equal Protection

To assert his equal protection claim, Plaintiff alleges that the NDOC Defendants treat inmate workers and inmate students differently because inmate workers received "10 days of sentence reductions whether they had worked 1 day or 20 days," but inmate students only received "2 to 10 days per month served and [were] given nothing for education break periods." (FAC at 5). Plaintiff further alleges that his good-time credits were not applied properly because he is a felon and a sex-offender. (*Id.* at 10).

The Equal Protection Clause of the Fourteenth Amendment requires a state to treat all similarly situated people equally. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). Where an inmate is not a member of a protected class, an equal protection claim is subject to the rational basis test. *See McGinnis v. Royster*, 410 U.S. 263, 270 (1973) (applying rational basis test where state law denied certain state prisoners good-time credit toward parole eligibility for the period of their presentence county jail incarceration, whereas those released on bail prior to sentencing received good-time credit for the entire period of their prison confinement). Under a rational basis inquiry, in order to prevail on an equal protection claim, a plaintiff must demonstrate that (1) he is similarly situated to others, (2) he is being treated worse than others with whom he is similarly situated, and (3) there is no rational basis for the disparate treatment. *More v. Farrier*, 984 F.2d 269, 271 (8th Cir. 1993).

Plaintiff's equal protection claim is based on the alleged disparate treatment between inmate workers and inmate students. (*See* FAC at 10–12). However, inmate workers and students are not similarly situated. For example, NRS 209.4465 treats inmate workers and students differently for purposes of awarding good-time credits. Under the statute, inmate students are able to earn a lump-sum amount of credits for completing certain educational milestones, such as receiving a high school diploma, in addition to earning a possible ten credits each month for study time; inmate workers are only entitled to ten credits each month for work time. *See* NRS 209.4465(2). Further,

prison workers and students have different responsibilities and assignments. Workers perform prison maintenance and services by staffing positions in the laundry, kitchen, etc., while inmate students attend educational classes. (Resp. at 7–8, ECF No. 30). Accordingly, inmate workers and students are not similarly situated. While Plaintiff is similarly situated to other inmate students, he has neither provided evidence that he is being treated differently than them, nor alleged that the differential treatment between workers and students under NRS 209.4465 is facially unconstitutional.

Further, with regards to Plaintiff's claims of discrimination based on his status as a felon and sex-offender, Plaintiff provides no factual allegations to demonstrate that any other inmates were similarly situated to Plaintiff as felon sex-offenders.[1] Thus, the Court dismisses Plaintiff's equal protection claims without prejudice.

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[1] The Court also acknowledges that NRS 209.4465(8) itself lawfully discriminates against certain felonies committed after July 1, 2007, such as Class A and B offenses or sexual or violent offenses punishable by felony. *See Vickers v. Dzurenda*, 433 P.3d 306 (Nev. App. 2018), (holding that NRS 209.4465(8) does not violate the equal protection clause by excluding certain offenders from applying their good-time credits to parole eligibility and minimum sentences). Good time credits are not applied to the parole eligibility dates or minimum sentences for these types of offenders. *See* NRS § 209.4465(8). Plaintiff does not allege his underlying offense, only that he is a sex-offender. (FAC at 10). However, depending on the underlying offense, it is possible that Plaintiff was not eligible to receive good-time credits by statute.

C. Plaintiff's Fourth, Fifth, and Eighth Amendment Claims

In his Response to Defendants' Motions to Dismiss, Plaintiff "agree[s] with the Defendants that the Fourth and Fifth Amendments do not apply to [his] situation" and "agrees to dismiss the 8th Amendment claim." Therefore, the Court dismisses Plaintiff's Fourth, Fifth, and Eighth Amendment claims with prejudice.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendants' Motions to Dismiss, (ECF Nos. 22, 24), are **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Ruling, (ECF No. 34), in **DENIED as moot**.

IT IS FURTHER ORDERED that NDOC Defendants' Motion to Stay Discovery, (ECF No. 44), is **DENIED as moot**.

DATED this 27 day of October, 2020.

/s/ Gloria M. Navarro
Gloria M. Navarro, District Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case Number: 2:19-cv-01044-GMN-EJY

[Filed October 28, 2020]

Philip Roy Galanti	)
Plaintiff,	)
	)
v.	)
	)
Nevada Dept of Corrections, et al.,	)
Defendants.	)
	)

JUDGMENT IN A CIVIL CASE

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

pursuant to the Order Granting the Motions to Dismiss, this matter is now closed. Judgment is entered for Defendants.

10/28/2020	DEBRA K. KEMPI
Date	Clerk
[SEAL]	/s/ D. Reich-Smith
	Deputy Clerk