

Case No. 73698

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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GLENN MILLER DOOLIN,

Appellant,

v.

THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS,

Respondent.

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On Appeal from the Eighth Judicial District Court of the State of Nevada  
Case No. A-16-745766-W

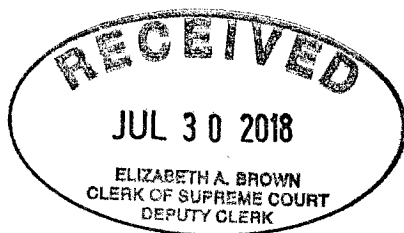
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RESPONDENT'S ANSWERING BRIEF

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ADAM PAUL LAXALT  
Attorney General  
Nevada Bar No. 12426  
JESSICA PERLICK  
Deputy Attorney General  
Nevada Bar No. 13218  
State of Nevada  
Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, Nevada 89101  
(702) 486-3825 (phone)  
jperlick@ag.nv.gov  
*Attorneys for Respondent*



FILED

AUG 08 2018

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

18-901738

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## **ISSUE PRESENTED**

The district court correctly declined to apply good-time credits to Glenn Miller Doolin's parole eligibility. Doolin is a habitual offender under NRS 207.010(1)(a), a classification that enhanced his underlying offense to a category B felony and precludes application of good-time credits to his parole eligibility.

## **STATEMENT OF THE CASE**

Doolin filed a Petition for a Writ of Habeas Corpus (post-conviction) seeking the application of good-time credit against his minimum sentence as a habitual criminal. Respondent's Appendix (RA) 1-24. The district court denied the Petition, reasoning that "Mr. Doolin is serving a sentence based on a category B felony [and] NRS 209.4465(8) specifically exempts this type of offense" from the application of credit against the parole eligibility date. RA 69 at 2:22-24. Doolin appealed the district court's decision. RA 51-64. Following Doolin's Opening Brief, the Nevada Supreme Court transferred Doolin's appeal to this Court. RA 72. Respondent (NDOC) now files this response per the Order Directing Response issued by this Court.

## **STATEMENT OF FACTS**

### **I. Doolin's Underlying Criminal Case**

On June 15, 2012, the State of Nevada charged Doolin in Case No. C284106 with one Count of Grand Larceny Auto, a category C felony, and one count of

Possession of Burglary Tools, a gross misdemeanor. RA 37-40. As a part of the Amended Information charging Doolin with these offenses, the State also notified Doolin and the court of its intent to seek adjudication as a habitual criminal. RA 39-40.

On April 10, 2013, the Eighth Judicial District Court adjudicated Doolin guilty in Case No. C284106, of one count of Grand Larceny Auto, a category C felony, and one count of Possession of Burglary Tools, a gross misdemeanor. RA 42-43. The district court sentenced Doolin on Count 1 under NRS 207.010(a) (Small Habitual Criminal Statute) to a maximum term of one hundred fifty (150) months, with a minimum parole eligibility of sixty (60) months. *Id.* The court further sentenced Doolin to 12 months on Count 2, to be served consecutively to Count 1. *Id.* Case No. 284106 also ran consecutively to Doolin's existing sentences in Case Nos. C283685 and C262611, neither of which is at issue here. *Id.*

Doolin is actively serving his small habitual criminal sentence, while his sentence for the gross misdemeanor remains pending. RA 45.

## **II. Doolin's Petition for Writ of Habeas Corpus**

On October 27, 2016, Doolin filed a Petition in the Eighth Judicial District Court alleging that he had been improperly deprived of the application of good time credit against his minimum sentence. RA 1-24. On June 7, 2017, the district court ordered NDOC to respond to Doolin's Petition. RA 25-26. On July 17, 2017, NDOC

filed its response to the Petition, asserting that Doolin was not entitled to credit against his minimum sentence because he was found to be a habitual criminal, a category B felony. RA 27-49. The court issued a minute order on July 18, 2017, denying Doolin's Petition. RA 50.

On August 3, 2017, Doolin appealed to the Nevada Supreme Court. RA 51-57. On October 3, 2017, the Nevada Supreme Court ordered the district court to file its Order Denying Doolin's Petition. RA 65-66. The district court filed its final Decision and Order on October 9, 2017, and its Notice of Entry on October 12, 2017. RA 67-71.

Doolin filed his *pro se* Opening Brief on December 19, 2017. The Nevada Supreme Court transferred Doolin's appeal to this Court on March 1, 2018. RA 72. On June 8, 2018, this Court issued an Order Directing Response, ordering NDOC to file a response to Doolin's Opening Brief and to address the issue of whether the restriction of NRS 209.4465(8)(d) applies to a petitioner convicted of a lesser felony who received enhanced punishment under the habitual criminal enhancement.

### **SUMMARY OF ARGUMENT**

NRS 207.010, the habitual criminal statute, exposes repeat felony offenders to more serious punishment than they would receive for a single felony offense—specifically, a longer prison sentence. It accomplishes this by enhancing the felony classification of a habitual offender's underlying crime to a category A or B felony.

For example, NRS 207.010 classifies the small habitual offender as a category B felon, regardless of the nature of the underlying felony offenses that qualify him as a habitual offender.

States have a valid and important interest in deterring habitual criminals, because recidivism is a serious public safety concern. In Nevada, the Legislature specifically sought to discourage repeat offenders, and provide an opportunity to reform through incarceration. Here, when the State charged Doolin in Case No. C284106, it was for one felony and one gross misdemeanor that he committed while a warrant was out for his arrest in an unrelated case. According to the notice to seek habitual treatment, this was at least the fifth felony Doolin committed. The district court accordingly found him to be a habitual offender subject to punishment as a category B felon.

NRS 209.4465(8) prohibits category A and B felons from application of good-time credits against their parole eligibility.<sup>1</sup> Thus, because NRS 207.010 specifically enhances the felony classification of a habitual offender to a category A or B felony,

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<sup>1</sup> In Nevada, in addition to flat time earned for each actual day an individual is in custody, inmates can earn twenty (20) statutory good-time credits for each month of incarceration. All offenders can have these good-time credits deducted from the maximum term of their sentences, but only certain offenders qualify to also have those credits deducted from their minimum term, or parole eligibility. For inmates who committed their offense after June 30, 2007, like Doolin, NRS 209.4465(8) restricts certain inmates from applying the credits against the minimum term.



these habitual offenders are prohibited from applying good-time credits against their parole eligibility under NRS 209.4465(8). To find otherwise would render the category A or B felony designation in the habitual criminal statute superfluous, and undermine the purpose of both NRS 207.010 and NRS 209.4465(8).

## **ARGUMENT**

### **I. Standard of Review**

This Court gives deference to factual findings of the district court, but it reviews legal conclusions *de novo*. *State v. Huebler*, 128 Nev. 192, 275 P.3d 91, 95 (2012). Questions of statutory interpretation are issues of law reviewed *de novo*. *See Davis v. Beling*, 128 Nev. 301, 278 P.3d 501, 510 (2012).

### **II. The Purpose of NRS 207.010 Is to Expose Repeat Felony Offenders to Harsher Punishment and Longer Prison Sentences.**

In Nevada, NRS 207.010 provides, as follows, that a two-time convicted felon shall be punished for his third felony as a category B felon:

(1) Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this State of:

(a) Any felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category B felony by imprisonment in the state

prison for a minimum term of not less than 5 years  
and a maximum term of not more than 20 years.<sup>2</sup>

NRS 207.010(1)(a).<sup>3</sup> “By enacting the habitual criminal statute, the legislature sought to discourage repeat offenders and to afford them an opportunity to reform.” *Rezin v. State*, 95 Nev. 461, 463, 596 P.2d 226, 227 (1979). The purpose of the habitual criminal statute is to allow the criminal justice system to deal with career criminals who threaten public safety. *Johnson v. State*, 354 P.3d 667, 677 (Nev. App. 2015). States have a valid and important interest in deterring habitual criminals, because recidivism is a legitimate basis for increased punishment, and is a serious public safety concern. *See generally Ewing v. California*, 538 U.S. 11, 25-26, 123 S.Ct. 1179, 1187-88 (2003). In Nevada, the statute makes no distinction between non-violent versus violent crimes; rather, the type of offense is merely a consideration within the court’s discretion as the court considers whether to classify the repeat offender a habitual criminal. *Arajkis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

When the State charged Doolin in 2012 with his fifth felony offense, it sought habitual criminal adjudication pursuant to NRS 207.010. RA 39-40. At his

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<sup>2</sup> Individuals adjudicated under this section of the statute are referred to as a small habitual criminal.

<sup>3</sup> If an offender is a three-time convicted felon, NRS 207.010(1)(b) states that he “shall be punished for a category A felony,” and can face life imprisonment. Individuals adjudicated under this section of the statute are referred to as a large habitual criminal.

sentencing in 2013, the district court adjudicated Doolin as a small habitual criminal. RA 42-43. NRS 207.010(1)(a) thus enhanced Doolin's felony classification from category C to category B.

Here, the apparent intent of the habitual criminal statute is to enhance the punishment a repeat offender receives, subjecting the repeat offender to a more serious punishment from what a one-time offender would normally receive. This Court should affirm the judgment of the district court, which gives effect to this intent. *See Edgington v. Edgington*, 119 Nev. 577, 582-83, 80 P.3d 1282, 1286-87 (2003) (stating that the apparent intent of a statute must be given effect when the language of the statute is unambiguous). NRS 207.010 requires the enhancement of Doolin's underlying felony from its specific category to a category B felony, and imposes harsher punishments on all career criminals like him.

Enhancing Doolin's offense to a category B felony subjected him to a longer and more serious term of imprisonment than was available to the court without the enhancement. Doolin's underlying category C offense allowed for a prison term of not less than one (1) year, and not more than five (5) years. NRS 205.228(2), NRS 193.130(2)(c). NRS 207.010, on the other hand, authorized the court to impose a maximum of one hundred fifty (150) months, or twelve and a half (12.5) years, with a minimum parole eligibility of sixty (60) months, or five (5) years. RA 42-43.

Accepting Doolin's suggestion that he should be treated as a category C felon for the purpose of applying good-time credits would render the language of NRS 207.010, mandating his punishment "for a category B felony," superfluous in that context. This Court "avoid[s] statutory interpretation that renders language meaningless or superfluous." *Williams v. State Dep't of Corr.*, 402 P.3d 1260, 1262 (Nev. 2011) (quoting *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011)). The Court should affirm the district court's conclusion that NRS 207.010 enhanced Doolin's offense to a category B felony and deny his request for the application of good-time credit to his parole eligibility date.

### **III. An Inmate Adjudicated as a Habitual Criminal Cannot Apply Good-Time Credits to His Minimum Term of Imprisonment.**

Inmates in Nevada have the opportunity to earn time credits through good behavior, program participation, or prison employment. NRS 209.4465. These credits can result in a substantially earlier opportunity for parole if applied to their minimum term. All offenders can have these good-time credits deducted from the maximum term of their sentences, but only certain offenders qualify to also have those credits deducted from their minimum term, or parole eligibility. *See generally, id.* at (7)(b) and (8). NDOC deducts the earned credits from the maximum term or maximum aggregate term of imprisonment, as applicable. *Id.* at (7)(a).

In 2007, the Nevada Legislature amended NRS Chapter 209, which regulates not only the credits earned by inmates, but the method in which such credits are deducted from the inmate's sentence. The legislature excluded some categories of crimes from the benefit of applying good-time credits to parole eligibility. This exclusion included category A or B felonies.

Credits earned pursuant to this section by an offender who has not been convicted of:

- (a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;
- (b) A sexual offense that is punishable as a felony;
- (c) A violation of NRS 484C.110, 484C.120, 484C.130, or 484C.430 that is punishable as a felony;
- (d) A category A or B felony,

apply to eligibility for parole . . . .

NRS 209.4465(8). Thus, category A and B felonies were no longer entitled to this good-time credit benefit.

Interpreted together, NRS 207.010 and NRS 209.4465 indicate that the legislature intends to punish more serious crimes by allowing for imposition of both harsher sentences and more restrictions on the application of good-time benefits. Both of these statutes work together to help to prevent excessively early release dates for serious criminals. This includes career criminals that threaten the safety and well-

being of Nevada communities. This Court will, whenever possible, “interpret a rule or statute in harmony with other rules or statutes.” *Watson Rounds v. Eighth Judicial Dist. Court*, 358 P.3d 228, 232 (Nev. 2015). Words in a statute should be given their plain meaning, unless this violates the spirit of the act. *McKay v. Board of Sup’rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). Under the presumption against ineffectiveness canon, “(1) interpretation always depends on context, (2) context always includes evident purpose, and (3) evident purpose always includes effectiveness.” Antonin Scalia & Bryan A. Garner, *Reading the Law: The Interpretation of Legal Texts* 63 (2012).

To read “convicted of” in NRS 209.4465 as a requirement to look beyond a career criminal’s category B felony classification to the nature of his underlying offense would violate both the intent of habitual enhancement under NRS 207.010, and of the restrictions contained in NRS 209.4465(8). NRS 209.4465(8), for example, aims to restrict several categories of serious offenders from reducing their minimum sentences by deducting earned credits from their minimum terms. *See generally, Williams*, 402 P.3d at 1264 n.6. This includes violent offenders, felony sex offenders, felony DUI offenders, and category A or B felons. In order for career criminals adjudicated under the small habitual statute to be “punished for a category B felony[,]” that punishment must include a prohibition against applying good-time credits to parole eligibility.

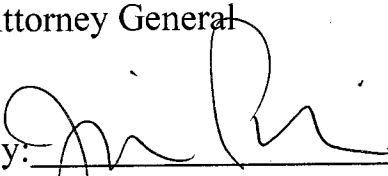
Enabling a habitual offender to acquire early parole eligibility, simply because he had the good fortune to commit a lesser felony as his third repeat-felony offense, violates the purpose of the Nevada statutory scheme mandating enhanced punishment for such offenders. This Court should decline Doolin's invitation to undermine the enhanced punishment he deserved and received under NRS 207.010. Only this decision would uphold the purpose and effectiveness of the habitual criminal statute, which "sought to discourage repeat offenders and to afford them an opportunity to reform." *Rezin v. State*, 95 Nev. 461, 463, 596 P.2d 226, 227 (1979); *see also* Scalia & Garner, *supra*, at 183.

### CONCLUSION

For the foregoing reasons, NDOC respectfully requests that this Court affirm the judgment of the district court denying Doolin's Petition.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of July, 2018.

ADAM PAUL LAXALT  
Attorney General

By:   
\_\_\_\_\_  
Jessica Perlick (Bar No. 13218)  
Deputy Attorney General

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2,605 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: July 27, 2018.

ADAM PAUL LAXALT  
Attorney General

By: 

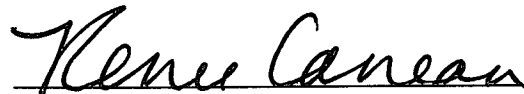
\_\_\_\_\_  
Jessica Perlick (Bar No. 13218)  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing RESPONDENT'S ANSWERING BRIEF to the Clerk of the Court to be filed, on the 27<sup>th</sup> day of July, 2018.

I further certify that I have also mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

Glenn Doolin, #1023173  
c/o Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070

  
An employee of the Office of the Attorney General