

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE A. GALLIMORT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69569

**FILED**

OCT 19 2016

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus challenging the computation of time served.<sup>1</sup> Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In a judgment of conviction entered on May 26, 1998, appellant Jose Gallimort was convicted of first-degree kidnapping with the use of a deadly weapon and battery with the use of a deadly weapon. He was sentenced to two consecutive prison terms of life with the possibility of parole after five years for the kidnapping count and two consecutive prison terms of 24 to 96 months for the battery count. His sentence for the battery count was imposed to run consecutive to his sentence for the kidnapping count.

In his habeas petition filed on September 14, 2015, Gallimort claimed the Nevada Department of Corrections (NDOC) improperly scheduled his parole hearings based on separate sentences rather than

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

one sentence. He argued that NRS 176.035(1) and NRS 193.165 preclude the Parole Board from considering his eligibility for parole before all of his "consecutive minimums" have been served. And he asserted the premature scheduling of his parole hearings were prejudicial because they prevented him from expiring his battery-with-the-use-of-a-deadly-weapon sentence or accumulating good-time and work-time credit that would have been applied to that sentence. The district court determined the Nevada Supreme Court's holding in *Nevada Dep't Prisons v. Bowen*, 103 Nev. 477, 481, 745 P.2d 697, 699-700 (1987), was dispositive of Gallimort's claim and denied his petition.

On appeal, Gallimort claims the district court erred in denying his petition because *Bowen* was erroneously decided. Gallimort argues the *Bowen* court ignored legislative intent when it held "that the penalty for a primary offense and the enhancement penalty imposed pursuant to NRS 193.165 are separate and distinct, the consecutive sentences imposed must be treated as separate sentences for all purposes." Gallimort cannot demonstrate error in this regard because Nevada Supreme Court decisions are binding on this court and the district court.

Nonetheless, we note Gallimort's claim is belied by *Bowen* because the Nevada Supreme Court determined


NRS 193.165 clearly evidences a legislative intent to impose separate penalties for a primary offense and for the use of a deadly weapon in the commission of the offense. The statute imposes a separate term of imprisonment "equal to and in addition to" the term of imprisonment for the primary offense. This separate prison term must be served consecutively to the term of imprisonment imposed for the primary offense, and the legislature expressly declared that NRS


193.165(1) "provides an additional penalty for the primary offense."

*Bowen*, 103 Nev. at 481, 745 P.2d at 699 (construing former NRS 193.165).

We conclude Gallimort has failed to demonstrate that *Bowen* was erroneously decided and the district court erred in denying his habeas petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Eric Johnson, District Judge  
Jose A. Gallimort  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk