

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MAGDALENO RODRIGUEZ,
Appellant,
vs.
BRIAN WILLIAMS,
Respondent.

No. 72390

FILED

NOV 03 2017

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

ORDER VACATING AND REMANDING

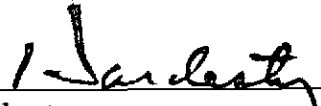
This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.


Appellant Jose Magdaleno Rodriguez argued that the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided in NRS 209.4465(7)(b) (1997). In rejecting Rodriguez's claim, the district court did not have the benefit of our recent decision in *Williams v. State*, 133 Nev., Adv. Op. 75, ___ P.3d ___ (2017). There, we held that credits apply to parole eligibility as provided in NRS 209.4465(7)(b) (1997) where the offender was sentenced pursuant to a statute that requires a minimum term of not less than a set number of years but does not expressly mention parole eligibility. Rodriguez is serving a sentence pursuant to such a statute for a weapon enhancement related to an attempted murder committed on or between July 17, 1997, and June 30,


¹We conclude that the district court properly treated the "Complaint and Request" filed on July 7, 2016, as a postconviction petition for a writ of habeas corpus. This appeal has been submitted for decision on the record without briefing or oral argument. NRAP 34(f)(3), (g); *see also* NRAP 31(d)(1); *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

2007. See NRS 193.165 (1995) (providing sentence for weapon enhancement based on sentence imposed for primary offense); NRS 193.330(1)(a)(1) (setting forth sentencing range for attempt to commit a category A felony). Consistent with *Williams*, the credits that Rodriguez has earned pursuant to NRS 209.4465 should be applied to his parole eligibility for the sentence he is serving. The district court erred in ruling to the contrary.² We therefore

ORDER the judgment of the district court VACATED AND REMAND this matter for the district court to reconsider its decision in light of *Williams*.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Linda Marie Bell, District Judge
Jose Magdaleno Rodriguez
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

²The court cannot grant relief as to any sentence that Rodriguez has discharged or on which he has appeared before the parole board. *Williams*, 133 Nev., Adv. Op. 75 at 10 n.7. Although the district court's order indicates that Rodriguez was scheduled to appear before the parole board on December 29, 2016, the record does not indicate whether he appeared before the parole board on that date. If he has appeared before the parole board on the enhancement sentence and the board did not grant him parole, he is entitled to no further relief as to that sentence. The district court may consider any evidence in that respect on remand.