

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPENCER JAMES PENGELLY,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 71445

FILED

NOV 01 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
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. First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

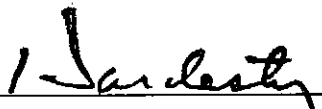
Appellant Spencer James Pengelly argues that the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided in NRS 209.4465(7)(b) (1997). In rejecting Pengelly's claim, the district court did not have the benefit of our recent decision in *Williams v. State*, 133 Nev., Adv. Op. 75, ___ P.3d ___ (2017).¹ 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. Pengelly is serving a sentence pursuant to such a statute for an attempted murder committed on


¹Having considered Pengelly's pro se brief and given our decision in *Williams*, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

17-37388

or between July 17, 1997, and June 30, 2007. See NRS 193.330(1)(a)(1) (setting forth sentencing range for attempt to commit a category A felony). Consistent with *Williams*, the credits that Pengelly 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: Chief Judge, The First Judicial District Court
Hon. William A. Maddox, Senior Judge
Spencer James Pengelly
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk

²The court cannot afford Pengelly any relief on the sentence that he has already expired. *Williams*, 133 Nev., Adv. Op. 75 at 10 n.7. Similarly, the court cannot grant him any relief on the sentence he is currently serving if he has already appeared before the parole board on that sentence. *Id.* It is unclear from the record before this court whether Pengelly has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.