

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEWIS W. STEWART,
Appellant,
vs.
JAMES E. DZURENDA, DIRECTOR,
NDOC; AND HAROLD WICKHAM,
WARDEN, WSCC,
Respondents.

No. 71357

FILED

NOV 01 2017

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

ORDER VACATING AND REMANDING

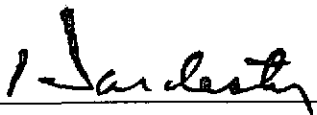
This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

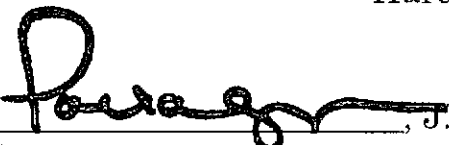
Appellant Lewis Stewart argues that the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided in NRS 209.4465(7)(b) (1997). In rejecting Stewart's claim, the district court did not have the benefit of our recent decision in *Williams v. State*, 133 Nev., 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. Stewart is serving a sentence pursuant to such

¹Having considered Stewart'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).

a statute, *see* NRS 200.380 (providing sentencing range for robbery), for a robbery committed on or between July 17, 1997, and June 30, 2007.² Consistent with *Williams*, the credits that Stewart has earned pursuant to NRS 209.4465 should be applied to his parole eligibility for that offense. The district court erred in ruling to the contrary.³ 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
Lewis W. Stewart
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk

²Pursuant to the exception set forth in NRS 209.4465(7)(b) (1997), Stewart was not entitled to have credits applied to his parole eligibility for first-degree kidnapping of a victim over 65 years of age because the sentencing statute expressly required that he serve a minimum term before being eligible for parole. *See* NRS 200.320(2). Additionally, he has discharged the sentence for that offense.

³If Stewart has already expired the sentence or appeared before the parole board on the sentence, then the court cannot grant any relief. *Williams*, 133 Nev., Adv. Op. 75 at 10 n.7. It is unclear from the record whether Stewart has appeared before the parole board on the robbery sentence. The district court may consider any evidence in that respect on remand.