

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION NICHOLSON,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN,  
Respondent.

No. 71369

**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.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.

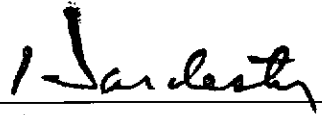
Appellant Darion Nicholson argued that the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided in NRS 209.4465(7)(b) (1997). In rejecting Nicholson's claim, the district court did not have the benefit of our recent decision in *Williams v. State*, 133 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. Nicholson 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, 2007. See NRS 193.165 (1995) (providing sentence for weapon enhancement based on sentence for primary offense); NRS 193.330(1)(a)(1) (setting forth

<sup>1</sup>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).

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sentencing range for attempt to commit a category A felony). Consistent with *Williams*, the credits that Nicholson 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.<sup>2</sup> 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 Eighth Judicial District Court  
Hon. Kathy A. Hardcastle, Senior Judge  
Darion Nicholson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>If Nicholson 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. As such, the court cannot grant relief with respect to the sentence for the primary offense (attempted murder) because Nicholson already discharged that sentence. It is unclear from the record whether Nicholson has appeared before the parole board on the enhancement sentence. The district court may consider any evidence in that respect on remand.