

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAD JOSEPH FRICKE,
Appellant,
vs.
JAMES E. DZURENDA, DIRECTOR,
NDOC; AND HAROLD WICKHAM,
WARDEN, WSCC,
Respondents.

No. 71714

FILED

NOV 15 2017

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

ORDER VACATING JUDGMENT AND REMANDING

Jad Joseph Fricke appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on May 26, 2016. First Judicial District Court, Carson City; James Todd Russell, Judge.


Fricke argues 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 Fricke's claim, the district court did not have the benefit of the Nevada Supreme Court's recent decision in *Williams v. State*, 133 Nev. ___, 402 P.3d 1260 (2017).¹ There, the court 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. Fricke is serving sentences pursuant to such

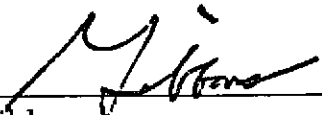
¹Having considered Fricke's pro se brief and given the decision in *Williams*, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

statutes for a weapon enhancement related to an attempted murder and felon in possession of a firearm committed on or between July 17, 1997, and June 30, 2007. See NRS 193.165 (1995); NRS 193.330(1)(a)(1); NRS 202.360(1). Consistent with *Williams*, the credits Fricke has earned pursuant to NRS 209.4465 should be applied to his parole eligibility on the sentence he is serving. The district court erred in ruling to the contrary.² Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²If a petitioner has already expired the sentence or appeared before the Nevada Board of Parole Commissioners on the sentence, the district court cannot grant any relief. *Williams*, 133 Nev. at ___ n.7, 402 P.3d at ___ n.7. Therefore, the district court cannot grant any relief as to Fricke's sentences for attempted murder, grand larceny, unlawful sale of a controlled substance to a minor, and burglary because he has already discharged or been paroled on these sentences. It is unclear from the record whether Fricke has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.

cc: Hon. James Todd Russell, District Judge
Jad Joseph Fricke
Attorney General/Carson City
Carson City Clerk