

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCO CARRILLO,
Appellant,
vs.
HAROLD WICKHAM, WARDEN,
Respondent.

No. 72469

FILED

DEC 14 2017

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

ORDER VACATING JUDGMENT AND REMANDING

Marco Carrillo appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on August 25, 2016. First Judicial District Court, Carson City; James E. Wilson, Judge.

Carrillo 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 Carrillo'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.

The district court made the following findings. Carrillo was convicted of first-degree kidnapping with the use of a deadly weapon,

¹Having considered Carrillo'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).

robbery with the use of a deadly weapon, and conspiracy to commit robbery and/or first-degree kidnapping for criminal conduct he committed between May 23, 2007, and May 31, 2007. And Carrillo was sentenced under NRS 200.320(2), a statute that specifies the minimum sentence a defendant must serve before becoming eligible for parole.

The district court's findings appear to indicate the first-degree-kidnapping statute was the controlling statute. See NRS 213.1213(1). However, Carrillo's 96- to 240-month prison sentence for first-degree kidnapping is not consistent with the penalties for first-degree kidnapping set forth in NRS 200.320(2).² Therefore, it is not clear that he was sentenced under this statute or any other statute that specifies the minimum sentence a defendant must be serve before becoming eligible for parole. Without a sufficient appellate record regarding the first-degree kidnapping sentence imposed in this case,³ we are unable to resolve Carrillo's appeal. Accordingly, we

²NRS 200.320(2) provides,


Where the kidnapped person suffers no substantial bodily harm as a result of the kidnapping, by imprisonment in the state prison:

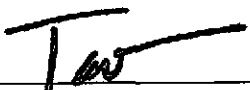
- (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or
- (b) For *a definite term of 15 years*, with eligibility for parole beginning when a minimum of 5 years has been served.


(Emphasis added.)

³We note the parties may have stipulated to this sentence in their plea negotiations. See *Breault v. State*, 116 Nev. 311, 314, 996 P.2d 888, 889 (2000).

ORDER the judgment of the district court VACATED AND REMAND this matter for the district court to reconsider its decision in light of the sentence imposed for first-degree kidnapping and the Nevada Supreme Court's decision in *Williams*.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Marco Carrillo
Attorney General/Carson City
Carson City Clerk