

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARKELL S. JONES,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 72558

**FILED**

DEC 29 2017

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

*ORDER VACATING AND REMANDING*

Markell S. Jones appeals from an order of the district court denying his November 29, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time served. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Jones argued 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 Jones' claim, the district court did not have the benefit of the recent Nevada Supreme Court decision in *Williams v. State*, 133 Nev. \_\_\_, 402 P.3d 1260 (2017).<sup>1</sup> There, the court held claims such as Jones' are cognizable in a postconviction petition for a writ of habeas

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<sup>1</sup>Having considered Jones' pro se brief and given the decision in *Williams*, we conclude a response is not necessary. See 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).


corpus and 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.

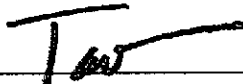
Jones is serving a sentence pursuant to such a statute for a weapon enhancement related to a robbery committed between July 17, 1997, and June 30, 2007. *See* NRS 193.165 (1995) (providing a sentence for weapon enhancement based on sentence imposed for primary offense); NRS 200.380(2) (setting forth sentencing range for robbery). Consistent with *Williams*, the credits Jones 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> Accordingly, we


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<sup>2</sup>The court cannot grant any relief as to the sentences Jones has already expired for the primary offense of robbery and for conspiracy to commit robbery. *See Williams*, 133 Nev. at \_\_\_ n.7, 402 P.3d at 1265 n.7. Similarly, the court cannot grant him any relief on the sentence he is serving if he has already appeared before the parole board on that sentence. *Id.* It is unclear from the record before this court whether Jones has appeared before the parole board on the current sentence. The district court may consider any evidence in that respect on remand.

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court to reconsider its decision in light of *Williams*.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jim C. Shirley, District Judge  
Markell S. Jones  
Attorney General/Carson City  
Pershing County Clerk

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<sup>3</sup>To the extent Jones challenged his prison classification as a violent offender, it was a challenge to his conditions of confinement and thus not cognizable in a postconviction petition for a writ of habeas corpus. See *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

Finally, Jones moved to supplement his informal appellate brief. We have considered his arguments and conclude he is only entitled to the relief described herein. Any argument regarding new legislation that may entitle him to additional credits must be raised in the district court in the first instance. See *Rimer v. State*, 131 Nev. \_\_\_, \_\_\_ n.3, 351 P.3d 697, 713 n.3 (2015).