

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYRONE D. MCKENZIE,
Appellant,
vs.
BRIAN WILLIAMS, SR., WARDEN,
Respondent.

No. 73578

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING
IN PART AND REMANDING*

Tyrone D. McKenzie appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 6, 2016. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

McKenzie first 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 McKenzie's claim, the district court did not have the benefit of the Nevada Supreme Court's recent decision in *Williams v. State Department of Corrections*, 133 Nev. ___, 402 P.3d 1260 (2017).¹ There, the court held claims such as McKenzie's are cognizable in a postconviction petition for a writ of habeas corpus and credits apply to parole eligibility, as provided in NRS 209.4465(7)(b) (1997), when an offender has been sentenced pursuant to a statute that does not expressly

¹Having considered McKenzie's 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).


mention parole eligibility. McKenzie is serving sentences for convictions of burglary while in possession of a firearm, three counts of robbery with the use of a deadly weapon, and conspiracy to commit robbery with the use of a deadly weapon committed on or between July 17, 1997, and June 30, 2007. See NRS 193.165(1) (1995); NRS 199.480(1) (1999); NRS 200.380(2); NRS 205.060(4) (2005). Consistent with *Williams*, the credits McKenzie has earned pursuant to NRS 209.4465 should be applied to his parole eligibility on the sentences he is serving for those convictions. The district court erred in ruling to the contrary. Accordingly, we reverse the denial of this claim and we remand this matter for the district court to reconsider its decision in light of *Williams*.²


Second, McKenzie claimed the Nevada Department of Corrections improperly denied him the opportunity to earn work credits or program credits. McKenzie had no right to employment while in prison. See NRS 209.4465(2); NRS 209.461(1); *Collins v. Palczewski*, 841 F. Supp. 333, 336-37 (D. Nev. 1993) (recognizing a prisoner has no independent constitutional right to employment and the Nevada statutes do not mandate employment). McKenzie also did not have a right to attend the prison's programs. See NRS 209.387; NRS 209.389(4). Therefore, McKenzie cannot demonstrate that lack of employment or program attendance and the resulting lack of opportunity to earn statutory credits violated any protected right. Accordingly, we affirm the denial of this claim.


²The district court cannot grant McKenzie any relief on the sentences he is serving if he has already appeared before the parole board on those sentences. See *Williams*, 133 Nev. at ___ n.7, 402 P.3d at 1265 n.7. It is unclear from the record before this court whether McKenzie has appeared before the parole board on his sentences. The district court may consider any evidence in that respect on remand.

Having concluded McKenzie is only entitled to the relief described herein, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Tyrone D. McKenzie
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk