

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERNEST JORD GUARDADO,  
Appellant,  
vs.  
DWIGHT NEVEN, WARDEN,  
Respondent.

No. 72383

FILED

NOV 14 2017

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

*ORDER VACATING AND REMANDING*

Ernest Jord Guardado appeals from an order of the district court denying his July 8, 2016, postconviction petition for a writ of habeas corpus challenging the computation of time served. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.


Guardado 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 Guardado's 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 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.

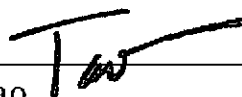
---


<sup>1</sup>Having considered Guardado'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).

Guardado is serving sentences pursuant to such statutes for burglary, first-degree arson, and possession of stolen property offenses committed on or between July 17, 1997, and June 30, 2007. See NRS 193.130(2)(c); NRS 205.010; NRS 205.060(2); NRS 205.275(2)(b); (c). Consistent with *Williams*, the credits Guardado 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.<sup>2</sup> Accordingly, we

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

---

<sup>2</sup>Guardado's sentences were all imposed consecutively. The record indicates he has had some parole hearings, but it does not indicate for which offenses or the results. If Guardado has already expired a sentence or appeared before the parole board on a particular sentence, then the court cannot grant any relief as to that count. *Williams*, 133 Nev. at \_\_\_ n.7, 402 P.3d at 1265 n.7. The district court may consider any evidence in that respect on remand.

<sup>3</sup>To the extent Guardado challenges the Nevada Department of Corrections' failure to award him work credits, this is new argument not raised below, and we decline to consider it in the first instance on appeal. See *Rimer v. State*, 131 Nev. \_\_\_, \_\_\_ n.3, 351 P.3d 697, 713 n.3 (2015).

cc: Hon. Linda Marie Bell, District Judge  
Ernest Jord Guardado  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk