

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW A. DAVIS,
Appellant,
vs.
BRIAN E. WILLIAMS, SR., WARDEN,
Respondent.

No. 74055

FILED

APR 25 2018

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

ORDER VACATING JUDGMENT AND REMANDING

Matthew A. Davis appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on September 23, 2016.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Davis 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 Davis' 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).² 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


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²Having considered Davis' pro se brief and given the decision in *Williams*, we conclude that a response is not necessary. NRAP 46A(c). This appeal has therefore been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

but does not expressly mention parole eligibility. Davis is serving sentences pursuant to such statutes for robberies with the use of a deadly weapon he committed between 2003 and 2004. See NRS 200.380(2); NRS 193.165 (1995). Consistent with *Williams*, the credits Davis has earned pursuant to NRS 209.4465 should be applied to his parole eligibility on the sentence he is serving. The district court erred by ruling to the contrary.³ 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*.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³If 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. ___ n.7, 402 P.3d at 1265 n.7. Therefore, the district court cannot grant any relief for the burglary while in possession of a firearm and some of the robbery-with-the-use-of-a-deadly-weapon offenses because Davis has already discharged or been paroled on these sentences. It is unclear from the record whether Davis has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.

cc: Hon. Linda Marie Bell
Matthew A. Davis
Attorney General/Carson City
Eighth District Court Clerk