

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TOLLIVER G. ARMSTRONG,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 73401

FILED

APR 25 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Tolliver G. Armstrong appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on May 16, 2017.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

Armstrong 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 Armstrong'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).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

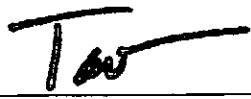
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²Having considered Armstrong's 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).

years but does not expressly mention parole eligibility. Armstrong is serving sentences pursuant to such statutes for robbery with the use of a deadly weapon committed on or between September 30, 2003, and March 29, 2004. See NRS 200.380(2); NRS 193.165 (1995). Consistent with *Williams*, the credits Armstrong 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 for 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 Armstrong has already discharged or been paroled on these sentences. It is unclear from the record whether Armstrong has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.

cc: Hon. James Todd Russell, District Judge
Tolliver G. Armstrong
Attorney General/Carson City
Carson City Clerk