

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KYLE WARNER TURPIN, SR.,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 72936

FILED

APR 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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

Kyle Warner Turpin, Sr., appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on August 3, 2016. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

First, Turpin argues the district court erred by denying his claim 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 Turpin'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 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. Turpin is serving such a sentence under the

¹Having considered Turpin'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).

small habitual criminal statute for a grand larceny auto he committed in 2002. See NRS 207.010(1)(a). Consistent with *Williams*, the credits Turpin 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.²


Second, Turpin argues the district court erred by denying his claim the Nevada Department of Corrections (NDOC) failed to apply 1,107 credits to his first sentence. He also argues the district court erred by denying his claim the NDOC failed to apply 150 days of work credit he claimed he earned toward his first sentence. These claims are moot. “[A]ny question as to the method of computing” a sentence is rendered moot when the sentence is expired. *Johnson v. Dir. Nev. Dep’t of Prisons*, 105 Nev. 314, 316, 774 P.2d 1047, 1049 (1989); see also *Niergarth v. Warden*, 105 Nev. 26, 768 P.2d 882 (1989) (recognizing no statutory authority or case law allowing for the retroactive grant of parole). Therefore, the district court did not err by denying these claims.


Finally, Turpin claims the district court failed to apply NRS 176.055(1), which allows the district court to apply credits toward consecutive sentences. Therefore, Turpin claims the current district court judge in this postconviction proceeding can have his jail time credits apply

²If 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. at ___ n.7, 402 P.3d at 1265 n.7. Therefore, the district court cannot grant any relief for his battery-with-the-use-of-a-deadly-weapon counts because Turpin has already discharged or been paroled on these sentences. It is unclear from the record whether Turpin has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.

to his consecutive sentences he is currently serving. This claim lacks merit. NRS 176.055(1) allows the judge imposing sentence to allow credit toward the minimum terms of imprisonment unless certain exceptions apply. It does not allow a district court in a postconviction proceeding to apply credits previously awarded credits to consecutive sentences. Therefore, the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court to reconsider its decision in light of *Williams*.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Kyle Warner Turpin, Sr.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

³We have considered all documents filed or received in this matter. We conclude Turpin is only entitled to the relief described herein.