


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK DE PALMA,  
Appellant,  
vs.  
JAMES DZURENDA, DIRECTOR; AND  
HAROLD WICKHAM, WARDEN,  
Respondents.

No. 73877

**FILED**

MAY 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING*

Frank De Palma appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.


In his June 24, 2016, petition, De Palma claimed the Nevada Department of Corrections (NDOC) incorrectly refused to apply the credits he has earned pursuant to NRS 209.4465 toward the minimum term he is serving for his battery by a prisoner conviction. In rejecting De Palma'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).<sup>1</sup> There, the court held claims such as De Palma'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 mention parole eligibility.


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<sup>1</sup>Having considered De Palma's pro se brief and given the decision in *Williams*, we conclude a response is not necessary. See NRAP 46A(c). This appeal has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

De Palma is serving a sentence for battery by a prisoner committed on or between July 17, 1997, and June 30, 2007. See NRS 200.481(2)(f) (1997). Consistent with *Williams*, the credits De Palma has earned pursuant to NRS 209.4465 should be applied to his parole eligibility on the sentence he is serving for that conviction. 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 the *Williams* decision.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James Todd Russell, District Judge  
Frank De Palma  
Attorney General/Carson City  
Carson City Clerk

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<sup>2</sup>The district court cannot grant De Palma any relief on his sentence for battery by a prisoner if he has already appeared before the parole board for that sentence. See *Williams*, 133 Nev. at \_\_\_ n.7, 402 P.3d at 1265 n.7. It is unclear from the record before this court whether De Palma has appeared before the parole board for his battery by a prisoner sentence and the district court may consider any evidence in that respect on remand.