

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PEDRO RAFAEL DUARTE,  
Appellant,  
vs.  
JO GENTRY, WARDEN; NDOC/OMD;  
AND THE STATE OF NEVADA,  
Respondents.

No. 73660

FILED

MAY 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING*

Pedro Rafael Duarte appeals from a district court order denying the postconviction petition for a writ of habeas corpus filed on October 16, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.


Duarte argues the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided by NRS 209.4465(7)(b) (1997). In rejecting Duarte'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). There, the court held that 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 Duarte's pro se brief and given the decision in *Williams*, we conclude that 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).

Duarte is serving, pursuant to statutes as identified above, an aggregate sentence that includes sentences for the attempted robberies he committed on June 28, 1999.<sup>2</sup> See NRS 193.330(1)(a)(2) (1997); NRS 200.380(2). Consistent with *Williams*, the credits Duarte has earned pursuant to NRS 209.4465 should be applied to his parole eligibility for the sentence he is serving. See generally NRS 213.1212 (addressing parole eligibility where the sentences have been aggregated). The district court erred by ruling to the contrary.<sup>3</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*.

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

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

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

---

<sup>2</sup>Duarte does not challenge the district court's finding that he "has discharged a portion of his sentence [and] is currently serving an aggregated sentence of thirty years maximum, with a minimum parole eligibility after six years for the remaining counts of attempted robbery."

<sup>3</sup>If 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 1264 n.7. It is unclear from the record whether Duarte 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, District Judge  
Pedro Rafael Duarte  
Attorney General/Carson City  
Eighth District Court Clerk