

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER CLAY,
Appellant,
vs.
ISIDRO BACA, WARDEN; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 73448

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

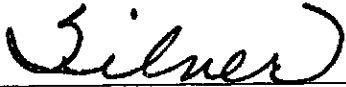
Christopher Clay appeals from a district court order denying the postconviction petition for a writ of habeas corpus filed on May 30, 2017. First Judicial District Court, Carson City; James Todd Russell, Judge.


Clay 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 Clay'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 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.


¹Having considered Clay'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).

Clay is serving, pursuant to a statute as identified above, a sentence for an attempted sexual assault committed on or between July 17, 1997, and June 30, 2007. See NRS 193.330(1)(a)(1); NRS 200.366(2). Consistent with *Williams*, the credits Clay has earned pursuant to NRS 209.4465 should be applied to his parole eligibility for the sentence he is serving. The district court erred by ruling to the contrary.² 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

cc: Hon. James Todd Russell, District Judge
Christopher Clay
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk

²The district court cannot grant Clay relief on his sentence if he has already appeared before the Nevada Board of Parole Commissioners. *Williams*, 133 Nev. at ___ n.7, 402 P.3d at 1264 n.7. It is unclear from the record whether Clay has appeared before the parole board on his sentence. The district court may consider any evidence in that respect on remand.