

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACINTO CHAVEZ,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 73736

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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

Jacinto Chavez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

In his August 22, 2016, petition, Chavez first 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 conviction for robbery with the use of a deadly weapon. In rejecting Chavez' 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 claims such as Chavez' are cognizable in a postconviction petition for a writ of habeas corpus and credits apply to parole eligibility, as provided in NRS

¹Having considered the record before this court 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 record. See NRAP 34(f)(3), (g).

209.4465(7)(b) (1997), when an offender has been sentenced pursuant to a statute that does not expressly mention parole eligibility.

Chavez is serving a sentence for robbery with the use of a deadly weapon and he committed the offense in 2005. See NRS 193.165 (1995); NRS 200.380(2). Consistent with *Williams*, the credits Chavez 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.² Accordingly, we reverse the district court's denial of this claim and direct the district court to reconsider Chavez' claim in light of the *Williams* decision.

Second, Chavez argued the NDOC miscalculated his statutory, work, and meritorious credits and, therefore, miscalculated the expiration date of his sentence. The district court reviewed Chavez' credit history report and concluded the NDOC had appropriately calculated the expiration date for Chavez' sentence. The record before this court supports the district court's decision. Accordingly, we conclude the district court did not err by denying this claim. For the foregoing reasons, we

²The district court cannot grant Chavez any relief on a sentence 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 Chavez has appeared before the parole board for either of the terms he is serving for his robbery with the use of a deadly weapon conviction and the district court may consider any evidence in that respect on remand.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Jacinto Chavez
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk