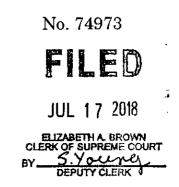# IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK MICHAEL FORD,
Appellant,
vs.
JO GENTRY, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 74973

FILED

JUL 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY_____S.Young_____
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Mark Michael Ford appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on September 29, 2017.[1] Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

In his petition, Ford claimed the Nevada Department of Corrections has not been applying his statutory credits toward his minimum terms. The district court denied this claim because Ford is currently serving a sentence for the deadly weapon enhancement which, by virtue of the underlying offense, requires a minimum term of 10 years to be served prior to parole eligibility.[2] Therefore, the district court determined Ford was not entitled to credits toward his minimum parole eligibility pursuant to NRS 209.4465(7)(b).

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[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

[2]We note the record before this court does not contain a copy of Ford's judgment of conviction indicating the nature of the crime committed or the charging document indicating when Ford committed his crime. However, Ford has not challenged this finding by the district court.

It appears from the record Ford may be serving an aggregated sentence that includes an enhancement sentence for the use of a deadly weapon related to a second-degree murder committed prior to July 1, 2007. Pursuant to NRS 209.4465(7)(b) (1997), Ford would not be entitled to have the credits he has earned applied to his parole eligibility on that weapon-enhancement sentence because it was imposed pursuant to a statute that required he serve a minimum of ten years before he is eligible for parole. *See* NRS 193.165 (1995) (providing the sentence for the deadly weapon enhancement is based on the sentence for the primary offense); NRS 200.030(5) (setting forth sentencing range for second-degree murder). Therefore, the district court was correct that NRS 209.4465(7)(b) does not apply to the weapon enhancement,

However, it also appears the aggregated sentence includes another sentence for burglary while in possession of a firearm, which was imposed pursuant to a statute requiring a minimum term of not less than a set number of years but did not expressly mention parole eligibility. *See* NRS 205.060(4). If that is accurate, then pursuant to NRS 209.4465(7)(b) (1997) and *Williams v. State Department of Corrections*, 133 Nev. ___, 402 P.3d 1260 (2017), credits earned under NRS 209.4465 would apply to Ford's parole eligibility on that sentence. *See generally* NRS 213.1212 (addressing eligibility for parole where prisoner's sentences have been aggregated). Therefore, if the sentences were aggregated, the district court should have considered whether NRS 209.4465(7)(b) applied to Ford's sentence for

burglary while in possession of a firearm.[3] Because the record is not sufficiently developed to resolve this issue, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.[4]

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

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

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[3]It is unclear from the record whether Ford has appeared before the parole board on the aggregated sentence; if so, the district court cannot grant him any relief. *See Williams*, 133 Nev. ___ n.7, 402 P.3d at 1265 n.7. The district court may consider any evidence in that respect on remand.

[4]We also note the district court's order did not adequately address Ford's claim his statutory credits were not being applied to his maximum term and his claims regarding due process and ex post facto violations.