

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN WILLIAMS, WARDEN,
Appellant,
vs.
SHAWN LEWIS WHITE,
Respondent.

No. 74924

FILED

JAN 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court order granting a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge. The State contends that the district court erred by granting respondent's petition in full. We agree.

In his petition, respondent argued that he was entitled to have credits earned pursuant to NRS 209.4465 deducted from the minimum terms for each of his sentences, which had been aggregated. The district court concluded that, pursuant to the statutory provisions in effect when respondent committed his offenses in 2005, he was entitled to have credits deducted from the minimum terms of his sentences for robbery and conspiracy, but not from his sentence for second-degree murder. See *Williams v. State*, 133 Nev., Adv. Op. 75, 402 P.3d 1260 (2017). Nevertheless, the district court granted respondent's petition in full and directed the Nevada Department of Corrections (NDOC) to deduct credits from the aggregated minimum sentence.

The district court erred when it ordered NDOC to deduct credits from the minimum term of respondent's sentence for second-degree murder because the statute setting forth the sentence for that offense requires that

the minimum term be served before an offender is eligible for parole. See NRS 200.030(5); *Williams*, 402 P.3d at 1264-65 & n.7; see also NRS 213.1212(2) (credits may only be earned to the extent that the credits would be earned had the sentences not been aggregated).¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Attorney General/Carson City
Attorney General/Las Vegas
Shawn Lewis White
Eighth District Court Clerk

¹It does not appear that respondent presented any evidence that NDOC could not correctly apply the appropriate credits within his aggregated sentence. Thus, there was no basis to grant that portion of respondent's petition. If the district court concluded that the State failed to adequately respond to appellant's petition, it could have sanctioned the State, but it could not grant the petition for that reason. See *Means v. State*, 120 Nev. 1001, 1020, 103 P.3d 25, 37 (2004).