

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS A. AGUIRRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75786-COA

**FILED**

JAN 31 2019

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

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

Luis A. Aguirre appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 30, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Aguirre claimed he was entitled to the application of statutory credits toward his minimum sentences pursuant to NRS 209.4465(7)(b). NRS 209.4465(7) begins, “[e]xcept as otherwise provided in subsection[ ] 8,” and NRS 209.4465(8)(d) specifically excludes the application of statutory credits to the minimum terms of sentences for category B felonies. A person serving a sentence for a nonviolent category C felony is entitled to the application of credits toward his minimum term for that sentence. *See* NRS 209.4465(7), (8).

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

In this case, Aguirre was convicted of conspiracy to violate the Controlled Substances Act, a category C felony, and trafficking in a controlled substance, a category B felony. Aguirre is not entitled to credits toward his minimum term for his category B felony. However, despite the fact Aguirre's sentences were aggregated, he would still be entitled to credits toward his minimum term for the category C felony. See NRS 213.1212(2). The district court incorrectly determined Aguirre was sentenced to concurrent sentences and found he was not entitled to relief because NRS 213.1213(1) states the longest sentence would determine the minimum for parole eligibility date. This was incorrect because Aguirre was sentenced to consecutive sentences.


This court ordered the State to respond to Aguirre's informal brief. The State acknowledges the district court erred but nonetheless urges this court to affirm the denial of Aguirre's petition because an exhibit attached to the State's response to Aguirre's petition shows he is receiving a parole hearing at three and a half years which demonstrates he is receiving credits toward his minimum term. We decline to do so. This court cannot determine from the record before it whether the credits are correctly being applied to Aguirre's minimum term.


Accordingly, we affirm the district court's denial of Aguirre's claim with regard to his category B felony, but reverse the district court's denial of Aguirre's claim with regard to his category C felony, and we remand this matter to the district court for determining whether Aguirre

has received credits toward his minimum term for his category C felony.<sup>2</sup>

Therefore, we

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.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. Linda Marie Bell, Chief Judge  
Luis A. Aguirre  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk

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<sup>2</sup>The district court cannot grant Aguirre any relief on his sentence for any count where he has already appeared before the parole board. See *Williams v. State Dep't of Corr.*, 133 Nev. \_\_\_, \_\_\_ n.7, 402 P.3d 1260, 1265 n.7 (2017). It is unclear from the record whether Aguirre has appeared before the parole board and the district court may consider any evidence in that respect on remand.