

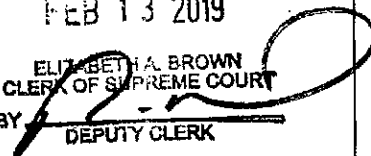
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MARISCAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75934-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

David Mariscal appeals from an order of the district court denying his postconviction petition for a writ of habeas corpus filed on June 13, 2016.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Mariscal was convicted of first-degree murder with the use of a deadly weapon and ultimately sentenced to two consecutive terms of 10 years to life in prison, with 5,181 days' credit for time served. In his motion to clarify imposition of the credit for time served, which the district court construed as a postconviction habeas challenge to the computation of time served, Mariscal sought clarification from the sentencing court as to

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


whether it intended all of his presentence credit to be applied to his murder sentence or whether, in accord with comments the court allegedly made during sentencing, it intended to divide the presentence credits between the murder and enhancement sentences. See *Mays v. Eighth Judicial Dist. Court*, 111 Nev. 1172, 1176, 901 P.2d 639, 642 (1995) (“[N]othing in [NRS 176.055] precludes the state from applying one portion of time served to the first term of a sentence and another portion of this time to a consecutive term. . . .”).

The district court denied Mariscal’s petition pursuant to NRS 209.4465(7)(b) and *Williams v. State Department of Corrections*, 133 Nev. ___, 402 P.3d 1260 (2017), and because the court could not order him to be released on parole but only grant an expedited parole hearing. Mariscal was not seeking to apply statutory credits to his minimum term, and he committed his crimes prior to the existence of NRS 209.4465. Accordingly, neither NRS 209.4465 nor *Williams* applied in this instance. And Mariscal sought an earlier parole hearing, which the district court acknowledged it could have ordered. We nevertheless affirm the district court’s denial of Mariscal’s petition. The record on appeal indicates the Nevada Department of Corrections applied Mariscal’s presentence credit in accord with the most recent amended judgment of conviction. Accordingly, we conclude the district court did not err by denying Mariscal’s petition, see *Wyatt v. State*,

86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason), and we

ORDER the judgment of the district court AFFIRMED.²


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, Chief Judge
David Mariscal
Attorney General/Las Vegas
Eighth District Court Clerk

²Mariscal does not challenge the transfer of his motion to the Eighth Judicial District Court or that it was construed as a postconviction petition for a writ of habeas corpus. Indeed, in light of arguments made by retained counsel below in support of transfer and construing the motion as a postconviction petition, any such challenge would have been futile.