

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN TUCKER,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 72074

FILED

NOV 03 2017

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

ORDER VACATING AND REMANDING

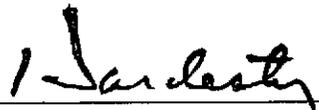
This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Allen Tucker argued that the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided in NRS 209.4465(7)(b) (1997). In rejecting Tucker's claim, the district court did not have the benefit of our recent decision in *Williams v. State*, 133 Nev., Adv. Op. 75, ___ P.3d ___ (2017). There, we held that credits apply to parole eligibility as provided in NRS 209.4465(7)(b) (1997) where the offender was sentenced pursuant to a statute that requires a minimum term of not less than a set number of years but does not expressly mention parole eligibility. Tucker is serving an aggregate sentence that includes sentences imposed pursuant to such a statute for a weapon enhancement related to a robbery and a second robbery with the use of a deadly weapon committed on or between July 17, 1997, and June 30, 2007. See NRS

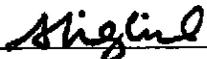
¹This appeal has been submitted for decision on the record without briefing or oral argument. NRAP 34(f)(3), (g); see also NRAP 31(d)(1); *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

193.165 (1995) (providing sentence for weapon enhancement based on sentence imposed for primary offense); NRS 200.380(2) (setting forth sentencing range for robbery). Consistent with *Williams*, the credits that Tucker has earned pursuant to NRS 209.4465 should be applied to his parole eligibility for the sentence he is serving. *See generally* NRS 213.1212 (addressing parole eligibility where sentences have been aggregated). The district court erred in ruling to the contrary.² We therefore

ORDER the judgment of the district court VACATED AND REMAND this matter for the district court to reconsider its decision in light of *Williams*.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

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

²The court cannot grant Tucker any relief as to the sentences that he has already discharged. *Williams*, 133 Nev., Adv. Op. 75 at 10 n.7. Similarly, the court cannot grant any relief on the sentence Tucker is serving at this time if he has appeared before the parole board on that sentence. *Id.* It is unclear from the record before this court whether Tucker has appeared before the parole board or discharged that sentence. The district court may consider any evidence in that respect on remand.