

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL TRACY MCLAUGHLIN,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS,
Respondents.

No. 73232 ✓

FILED

APR 11 2018

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

MICHAEL TRACY MCLAUGHLIN,
Appellant,
vs.
JO GENTRY, WARDEN; AND DWAYNE
DEAL, OMD,
Respondents.

No. 73233

ORDER VACATING AND REMANDING

Michael Tracy McLaughlin appeals from a district court order denying the postconviction petitions for writs of habeas corpus he filed on August 16, 2016, and February 3, 2017. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b)(2).

McLaughlin argues the credits he has earned pursuant to NRS 209.4465 must be applied to his parole eligibility as provided by NRS 209.4465(7)(b) (1997). In rejecting McLaughlin's claim, the district court did not have the benefit of the Nevada Supreme Court's recent decision in *Williams v. State Department of Corrections*, 133 Nev. ___, 402 P.3d 1260


(2017).¹ There, the court 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.

McLaughlin is serving, pursuant to statutes as identified above, an aggregate sentence that includes sentences for the crimes of attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon, and burglary with the use of a deadly weapon he committed on December 10, 2002. *See* NRS 193.165 (1995); NRS 193.330 (1997); NRS 200.030(4), (5) (1999); NRS 200.481(2)(e)(1) (2001); NRS 205.060(2) (1995). Consistent with *Williams*, the credits McLaughlin 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 the sentences have been aggregated). The district court erred by ruling to the contrary.² Accordingly, we

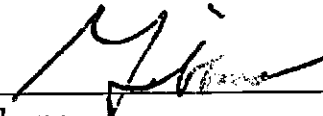
¹Having considered McLaughlin's pro se briefs and given the decision in *Williams*, we conclude that a response is not necessary. *See* NRAP 46A(c). These appeals therefore have been submitted for decision based on the pro se briefs and the record. *See* NRAP 34(f)(3).

²If a petitioner has already expired the sentence or appeared before the Nevada Board of Parole Commissioners on the sentence, the district court cannot grant any relief. *Williams*, 133 Nev. at ___ n.7, 402 P.3d at 1264 n.7. It is unclear from the record whether McLaughlin has appeared before the parole board on his current sentence. The district court may consider any evidence in that respect on remand.

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court to reconsider its decision in light of *Williams*.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Michael Tracy McLaughlin
Attorney General/Carson City
Eighth District Court Clerk

³We have reviewed all documents McLaughlin has filed in these appeals, and we conclude no additional relief based upon those submissions is warranted.