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### Williams v. State Dep't of Corr., 133 Nev. Adv. Op. 75 (Oct. 5, 2017)

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CRIMINAL APPEAL: COMPUTATION OF TIME SERVED

**Summary**

The Nevada Supreme Court considered whether an offender must serve the minimum term of his or her sentence before any credits earned pursuant to the Credits statute apply to eligibility for parole. The Court disagreed with this argument, and held that credits earned can factor-in for parole eligibility if the offender was sentenced under a state that requires a minimum term, but does not explicitly mention parole eligibility.

**Background**

In 2010, Jessica Williams was driving under the influence and struck and killed six teenagers. She was convicted pursuant to the DUI statute and sentenced to six consecutive terms, with a minimum term of thirty-six months and a maximum term of ninety-six months for each count.

Six years later, Williams filed a writ of habeas corpus petition arguing that her credits earned should apply to her eligibility for parole, pursuant to the Credits statute. The district court denied the petition, finding that the Nevada Legislature intended for the offender to serve the minimum term before being eligible for parole. This appeal followed.

**Discussion**

*Williams was not sentenced pursuant to a statute that specified a minimum sentence that must be served before she becomes eligible for parole*

The Nevada Supreme Court reviewed *de novo* whether the Legislature intended for prisoners to serve the minimum term of their sentence before becoming eligible for parole. The Court looked at the plain meaning of NRS 209.4465(7), which states that credits earned “(a) must be deducted from a prisoner’s maximum term...and (b) apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole”.<sup>2</sup>

Williams was sentenced pursuant to former NRS 484.3795(1) (currently codified as 484C.430(1)), which stated that a person in violation of the statute would be punished by a “minimum term of not less than 2 years and a maximum term of not more than 20 years”.<sup>3</sup> Since the statute is silent regarding parole eligibility, the Court concluded that the plain language of the statute does not specify a term the prisoner must serve before becoming eligible for parole.

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<sup>1</sup> By Xheni Ristani.

<sup>2</sup> NEV. REV. STAT. § 209.4465(7) (2017).

<sup>3</sup> NEV. REV. STAT. § 484.3795(1) (1999).

Therefore, Williams was not limited by NRS 209.4465(7)(b) and she was allowed a deduction of credits from her minimum sentence.

The State argued that statutes that specify a set minimum term, like NRS 484.3797(1), inherently require the offender to serve the minimum term before being eligible for parole. The Court found two problems with the State's interpretation.

First, the Court noted that the plain language in NRS 484.3797(1) contrasts with the language used in other sentencing statutes, which "delineate a [maximum sentence], with eligibility for parole beginning when a minimum of [x] years has been served".<sup>4</sup> These are different from statutes like the DUI statute here, which make no reference to parole eligibility.<sup>5</sup> Based on these differences, the Court concluded that the Legislature did not intend that offenders serve a specific term before becoming parole-eligible if the sentencing statute does not include express language to that effect.

Second, the State's interpretation would render the general rule in the Credits statute, that credits apply to parole eligibility, meaningless, and as such, must be avoided.<sup>6</sup> There are three types of sentences in Nevada: minimum-maximum, parole-eligibility, and determinate sentences. NRS 209.4465(7)(b) does not apply to determinate sentences, because such sentences only have a maximum term and NRS 209.4465(7)(a) already applies to maximum terms. Nor does NRS 209.4465(7)(b) apply to parole-eligibility sentences, since these types of sentences expressly state the minimum term that must be served by offenders and are excluded by the language in the statute. The State's interpretation would have the same effect on the minimum-maximum sentences, resulting in meaningless statutory language. Accordingly, the Court found that the sentencing statute in this case did not require a minimum term to be served before the offender could be eligible for parole and NRS 209.4465(7)(b) allows a deduction of credits from Williams' minimum sentence.

*NRS 213.120(2) does not control over NRS 209.4465(7)(b)*

As a secondary argument, the State focuses on NRS 213.120(2), which, at the time of Williams' offense, stated that "[a]ny credits earned to reduce [a prisoner's] sentence pursuant to chapter 209 of NRS while the prisoner serves the minimum term of imprisonment may reduce only the maximum term of imprisonment imposed and must not reduce the minimum term of imprisonment".<sup>7</sup> Since this provision conflicts with NRS 209.4465(7)(b), the Court relied on two rules of statutory construction to resolve the conflict: the general/specific canon and the implied repeal canon.

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<sup>4</sup> See, e.g., NEV. REV. STAT. § 200.030(4)(b)(2)–(3) (2013); NEV. REV. STAT. § 200.366(2)(a)(2) (2015); NEV. REV. STAT. § 200.366(2)(b) (2015); NEV. REV. STAT. § 453.334(1)–(2) (1999).

<sup>5</sup> See, e.g., NEV. REV. STAT. § 200.380(2) (1995); NEV. REV. STAT. § 200.481 (2017); see also NEV. REV. STAT. § 193.130(2)(b)–(e) (1999).

<sup>6</sup> *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011).

<sup>7</sup> NEV. REV. STAT. § 235.120 (1995).

The general/specific canon dictates that the more specific statute takes precedence<sup>8</sup> and is construed as an exception to the general statute.<sup>9</sup> The Court concluded that NRS 213.120(2) is the more general statute and NRS 209.4465(7)(b) is the more specific statute, and therefore, the latter is an exception to the former. The implied repeal canon reaches the same result. The canon solves the conflict by providing that the more recent statute is controlling.<sup>10</sup> Accordingly, NRS 209.4465(7)(b) is more recent, and controls in this case.

### **Conclusion**

Based on the Court's interpretation, NRS 209.4465(7)(b) allows credits earned to be applied to Williams' minimum sentence, because the sentencing statute in this case was silent on parole eligibility. The Court reversed the judgment of the district court and remanded the case.

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<sup>8</sup> Lader v. Warden, 121 Nev. 682, 687, 120 P.3d 1164, 1167 (2005).

<sup>9</sup> See ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 183 (2012).

<sup>10</sup> Laird v. State of Nev. Pub. Emps. Ret. Bd., 98 Nev. 42, 45, 635 P.2d 1171, 1173 (1982).