IN THE SUPREME COURT OF THE STATE OF NEVADA

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JESSICA WILLIAMS, Petitioner-Appellant, v. NEVADA DEPARTMENT OF CORRECTIONS; AND JO GENTRY, WARDEN, Respondents-Appellees.	Case No. 71039 District Court No. A-16-735072-W

Appeal from Order Denying Petition for Writ of Habeas Corpus

Eighth Judicial District Court

RESPONDENTS-APPELLEES' ANSWERING BRIEF

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ROUTING STATEMENT

This case should be retained by the Supreme Court because it raises as a principal issue a question of statewide public importance pursuant to NRAP 17(a)(14). The question of statutory interpretation at issue in this appeal will affect the calculation of the parole eligibility of many Nevada prisoners, and is therefore a question of particular importance to many Nevada prisoners and their families, and to the victims of their crimes and their families. The calculation of parole release eligibility is also a public safety issue for all Nevada citizens.

This case also presents an issue upon which there is a conflict in the decisions of the Supreme Court, although that conflict arises in unpublished, rather than published, decisions of this Court. *See* NRAP 17(a)(14).

ISSUE PRESENTED FOR REVIEW

Did the district court correctly reject petitioner Jessica Williams' claim that she was entitled to apply statutory credits to the minimum terms of her sentences?

STATEMENT OF THE CASE

On March 19, 2000, petitioner Jessica Williams (hereinafter "Williams) plowed her car into a group of teenagers picking up trash in the freeway median, killing six of them. On April 6, 2001, Williams was convicted of six counts of driving and/or being in actual physical control with a prohibited substance in the blood resulting in death, as well as one count each of use of a controlled substance and possession of a controlled substance. Respondents' Appendix (RA) 33-35. Williams was sentenced to six consecutive sentences of 36 to 96 months for each of the counts resulting in death, and was granted probation on the remaining two counts. *Id.*

On April 14, 2016, while serving the fifth of her six sentences, Williams filed a petition for a writ of habeas corpus challenging the computation of her sentence. RA 1-20. Specifically, Williams claimed that although this Court had previously decided in *Breault v. State*, 116 Nev. 311, 996 P.2d 888 (2000), that the statutes at the time of her offenses did not allow for the application of statutory credits to a prisoner's minimum sentence, this Court subsequently reinterpreted the statutes in an unpublished order in *VonSeydewitz v. LeGrand*, 2015 WL 3936827

(Nev. May 24, 2015). RA 9-11. Respondents opposed the petition, and it was denied. RA 21-30. Appellant's Appendix (AA) 1-5. This appeal follows.

SUMMARY OF ARGUMENT

The district court did not err in denying Williams' petition because the statutes that existed at the time of her offenses did not allow for the application of statutory credits to a prisoner's minimum sentence. To the extent that a panel of this Court decided differently in an unpublished order in *Vonseydewitz v. LeGrand*, the panel erred in its application of the rules of statutory construction. Specifically, the *VonSeydewitz* panel erred by concluding that the statute was only susceptible to one construction when every other court that has considered the issue to date has agreed on a different interpretation. Moreover, even if the statute is unclear, legislative intent is the key factor when interpreting it, and there is no dispute that the Nevada Legislature intended the pre-2007 statutes to preclude the application of credits to a prisoner's minimum sentence.

STANDARD OF REVIEW

When this Court reviews the disposition of a post-conviction habeas petition, it grants deference to the lower court's factual findings, but reviews its legal conclusions de novo. *Rippo v. State*, 132 Nev. ___, ___, 368 P.3d 729, 735 (2016). The district court's resolution of questions of statutory interpretation are also subject

to de novo review. *See Davis v. Beling*, 128 Nev. ___, ___, 278 P.3d 501, 510 (2012).

ARGUMENT

I. The Plain Language of NRS 209.4465(7)(b) Precludes the NDOC From Applying Good-Time Credits to Williams' Minimum Sentences.

Statutes must be given "their plain meaning unless this violates the spirit of the act." *McKay v. Board of Sup'rs of Carson City*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). "Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." *Id.* The plain language of the statutes that govern the calculation of Williams's sentences contravene her claim that she is entitled to apply statutory credits to her minimum sentences.

Williams is currently serving a sentence for DUI causing death pursuant to what was then NRS 484.3795.[1] RA 33-35. Her sentence is the result of events that occurred on March 19, 2000. *See* RA 23; RA 66; Appellant's Opening Brief (OB) at 4. In 2000, NRS 209.4465(7) limited the application of statutory credits, stating that:

> Credits earned pursuant to this section:
>
> (a) Must be deducted from the maximum term imposed by the sentence; and

[1] The statute was later substituted by NRS 484C.430.

> (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*.

1999 Nev. Stat., ch. 552, §8, at 2881-82 (emphasis added). At the same time, NRS 484.3795 stated that:

> A person who... [h]as a prohibited substance in his blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379, and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this state, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, is guilty of a category B felony and shall be punished by imprisonment in the state prison *for a minimum term of not less than 2 years* and a maximum term of not more than 20 years and must be further punished by a fine of not less than $2,000 nor more than $5,000.

1999 Nev. Stat., ch. 622, §28, at 3422 (emphasis added). Concurrently with these sentencing statutes, NRS 213.120(2), which is titled, "When Prisoner Becomes Eligible for Parole," stated that an offender sentenced to prison for a crime committed after July 1, 1995, "may be paroled when he has served the minimum term of imprisonment imposed by the court." 1995 Nev. Stat., ch. 1259, § 235, at 1260. The statute also provided that statutory credits "may reduce only the maximum term of imprisonment imposed and must not reduce the minimum term of imprisonment." *Id.* at 1260.

In 2000, any statutes that designated a "minimum term" of imprisonment inherently set the minimum sentence the offender was required to serve before becoming parole eligible. *Id.*; NRS 209.4465(7)(b). Accordingly, the minimum

term of a sentence pursuant to a statute that provided for both a minimum and maximum term was "a minimum sentence that must be served before a person becomes eligible for parole." NRS 209.4465(7)(b).

The Eighth Judicial District Court sentenced Williams pursuant to a statute that required her to serve "not less than 2 years" as a minimum term (and therefore, serve at least two years before parole eligibility). RA __; 1999 Nev. Stat., ch. 622, §28, at 3422; NRS 213.120(2). Accordingly, the exception carved out in NRS 209.4465(7)(b) applies to Williams' sentences and the NDOC is prohibited from applying statutory credits to her minimum terms by the plain language of the statutes that existed at the time of her offenses. NRS 209.4465(7)(b).

II. To the Extent that NRS 209.4465(7)(b) is Unclear, Legislative History and Intent Preclude Relief.

Williams' habeas petition is just one small part of a recent flood of petitions challenging the calculation of the minimum sentences of Nevada's prisoners. These petitions are the result of an unpublished order filed by a three-judge panel of this Court in *VonSeydewitz v. LeGrand*, 2015 WL 3936827 (Nev. May 24, 2015).[2] In that order, the panel concluded—18 years after the statute became

[2] Although unpublished orders issued prior to January 1, 2016, should not be relied upon as either persuasive or mandatory precedent, *see* Nevada Rules of Appellate Procedure (NRAP) 36(c)(2), (3), this has not stopped many petitioners, like Williams, from seeking relief based on that decision, and they have not hesitated to do so explicitly. *See* OB 2. In fact, Williams' opening brief is almost

law—that the pre-2007 language of NRS 209.4465(7)(b) did not prevent the majority of Nevada inmates sentenced for crimes committed before 2007 from applying statutory credits to their minimum sentences. The panel also went so far as to assert that the statutes at issue were "not reasonably susceptible to more than one construction." *Vonseydewitz*, 2015 WL 3936827, at *2. However, this Court had at least twice previously interpreted the same statutes differently. *See Breault v. State*, 116 Nev. 311, 996 P.2d 888 (2000); *Kille v. Cox*, 2014 WL 4670217 (Nev. Sept. 18, 2014). Furthermore, as of the date of the filing of this brief, no district court judge in the State of Nevada had agreed with the interpretation of the panel in *VonSeydewitz*. Prior to *VonSeydewitz*, most jurists would have agreed that the statutes were clear. But to the extent that the *VonSeydewitz* decision muddied the waters, the panel in that case erred by not resolving any confusion by looking to the intent of the Nevada Legislature.

If a statute is not clear on its face, Nevada law requires an interpreting court to look to the legislative intent. *McNeill v. State*, 132 Nev. __, ___, 375 P.3d 1022, 1025 (2016); *see also Sanchez-Dominguez v. State*, 130 Nev. ___, ___, 318 P.3d 1068, 1074 (2014) (stating the "well-established rule that statutory construction must not defeat the purpose of a statute"); *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) ("When interpreting a statute, legislative intent 'is the

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a word for word reproduction of the *Vonseydewitz* decision. *Compare* OB 4-8 *with Vonseydewitz*, 2015 WL 3936827, at *1-3.

controlling factor.'" (quoting *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983)); *Savage v. Pierson*, 123 Nev. 86, 95, 157 P.3d 697, 703 (2007) (interpreting statutory provision to create redundancy because that was the legislative intent); *Southern Nevada Homebuilder's Ass'n*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) ("[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." (quoting *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001)). Indeed, courts have explained that the purpose of the rules of statutory construction is to discern the intent of the enacting legislative body. *See Albernaz v. U.S.*, 450 U.S. 333, 340 (1981); *U.S. v. Chambers*, 985 F.2d 1263, 1273 (4th Cir. 1993). As described below, the legislative intent in this case is clear.

A. Statutory History

Between 1967 and 1995, Nevada law generally provided for "determinate" sentences in felony cases. *See* 1967 Nev. Stat., ch. 211 § 2, at 458-59; 1995 Nev. Stat., ch. 443, § 1, at 1167-68. These statutes imposed a single term of imprisonment, and parole eligibility was based upon serving a specified percentage of that term. *See* NRS 213.120(1). During this same time period, some statutes imposed sentences with a maximum term and stated a minimum term of years that

must be served before an offender became eligible for parole. Respondent will refer to these as "parole-eligibility" statutes. Inmates sentenced under these statutes were not eligible for parole until they served their minimum sentence.

In 1981, the Nevada Supreme Court decided that inmates serving "parole-eligibility" sentences were entitled to apply good time credits against their minimum sentences for the purpose of parole eligibility. *Demosthenes v. Williams*, 97 Nev. 611, 637 P.2d 1203 (1981). In response, the 1983 Nevada Legislature amended NRS 209.443, adding language similar to the language now found in NRS 209.4465(7)(b). *See* 1983 Nev. Stat., ch. 158, § 1, at 360-61 ("Good time does not apply to eligibility for parole if a statute specifies a minimum sentence that must be served before a person becomes eligible for parole."). This language was intended to abrogate *Demosthenes* and prevent inmates serving "parole eligibility" sentences from receiving credit towards their minimum terms.

In 1995, the Nevada Legislature passed SB 416 as part of the "truth-in-sentencing" movement. 1995 Nev. Stat., ch. 443, at 1167. That bill replaced Nevada's determinate sentencing statutes with our current sentencing statutes that set both a minimum term and a maximum term, which respondent will refer to as "min-max" sentencing statutes. 1995 Nev. Stat., ch. 443, § 1 at 1167-68. In passing SB 416, the Legislature expressed its intention to "require prisoners to serve the minimum term of imprisonment imposed by their sentence before

becoming eligible for parole." 1995 Nev. Stat., ch. 443, at 1167. There are over a thousand pages of legislative history related to SB 416, and that history reflects the Nevada Legislature's clear intent to prohibit all prisoners from receiving credit towards their minimum sentences. *See, e.g.*, http://www.leg.state.nv.us/Division/Research/Library/Leg History/LHs/1995/SB416,1995pt1.pdf (last accessed June 2, 2016). To accomplish this end, SB 416 also amended NRS 213.120 to require that "any 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." 1995 Nev. Stat., ch. 443, § 235, at 1260-61. As of 1995, Nevada laws did not permit any Nevada inmate to apply statutory credits towards his or her minimum term.[3]

This remained true until 2007, when the Nevada Legislature passed AB 510 and provided that "certain credits to the sentence of an offender convicted of certain category C, D, or E felonies must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole." 2007

[3] This is true despite any differences in the phrasing of the sentencing statutes that remained on the books. There is no functional difference between a parole-eligibility sentence and a minimum-maximum sentence. Both types of sentences include a minimum that must be served before the prisoner is eligible for parole and a maximum that must be served before the sentence expires.

Nev. Stat., ch. 525, Legislative Counsel's Digest, at 3171. AB 510, including the addition of NRS 209.4465(8), allowed good-time credits earned by some categories of felons with min-max sentences to be applied to their parole eligibility for the first time since 1983, but maintained the status quo for the remainder.

Throughout all of these changes to the sentencing statutes, the language that was adopted in 1983 to distinguish between "determinate" and "parole-eligibility" sentencing statutes was carried over into each new version of the credits statutes and remains in those statutes to this day. *See* 1983 Nev. Stat., ch. 158 § 1, at 360-61 (adding the provision to NRS 209.443); 1985 Nev. Stat., ch. 615, § 1 at 1924-25 (creating NRS 209.446 with the same provision); 1997 Nev. Stat., ch. 641, § 4, at 3175 (creating NRS 209.4465 with the same provision); 2007 Nev. Stat., ch. 525, §5 at 3177 (amending NRS 209.4465 but keeping the provision intact); NRS 209.4465(7) (current statute). Viewing this language in its historical context, it is clear that its purpose was to prevent the application of statutory credits to the minimum sentences of Nevada prisoners. This fact is only made clearer when NRS 209.4465 is viewed in conjunction with NRS 213.120 as those statutes read prior to AB 510. *See* 1995 Nev. Stat., ch. 443, § 235, at 1259-60. The Legislature specifically acknowledged the credits provisions of NRS chapter 209 before stating those very credits "must not reduce the minimum term of imprisonment." *Id.* The statutory scheme between 1995 and 2007 simply did not permit felons sentenced to

both a maximum and a minimum term to apply their good-time credits to their minimum terms. *See Breault v. State*, 116 Nev. 311, 314, 996 P.2d 888, 889 (2000) (Under NRS 213.120, "credits earned to reduce [a prisoner's] sentence pursuant to NRS chapter 209 may only reduce the maximum term.").

B. *VonSeydewitz v. LeGrand*

Last year, a panel of the Nevada Supreme Court reached a different conclusion in an unpublished order. *VonSeydewitz v. LeGrand*, 2015 WL 3936827 (Nev. May 24, 2015). The panel reasoned that if the language of the exception in NRS 209.4465(7)(b) was interpreted in the way that it was originally intended, it would become meaningless because Nevada no longer has determinate sentences. *Id.* The panel decided its priority was to give meaning to that phrase, and therefore elected to read it differently, concluding that it instead distinguishes between parole-eligibility statutes and min-max statutes. *Id.* The panel concluded that prior to AB 510, all prisoners with min-max sentences were entitled to apply earned credits toward their parole eligibility. *Id.* That decision was wrong.

1. The *VonSeydewitz* panel failed to give appropriate deference to the intent of the Nevada Legislature.

Although courts will avoid rendering a provision nugatory, "it is the duty of [courts], when possible, to interpret provisions within a common statutory scheme 'harmoniously with one another in accordance with the general purpose of those statutes' and to avoid unreasonable or absurd results, thereby giving effect to the

Legislature's intent." *Southern Nevada Homebuilder's Ass'n*, 121 Nev. at 449, 117 P.3d at 173. As explained in the statutory history, the language in NRS 209.4465(7)(b) was added to the credits statutes in the early 1980s, prior to the creation of min-max sentences, in order to abrogate *Demosthenes v. Williams*, 97 Nev. 611, 637 P.2d 1203 (1981). It was intended to differentiate between statutes providing for determinate sentences and sentences that imposed [x] years in custody with parole eligibility after [y] years have been served. *Id.* The Legislature then carried the language into every version of the credits statutes enacted since 1983, even though determinate sentences ceased to exist after 1995. NRS 193.130; NRS 209.446; NRS 209.4465. The *Vonseydewitz* panel's attempt to avoid nugatory language by constructing a new meaning for NRS 209.4465(7)(b) only frustrates the well-understood and acknowledged intent of the Nevada Legislature.

In 1995, SB 416 created min-max sentence structures, provided that the minimums determined parole eligibility and that credits earned pursuant to NRS Chapter 209 did not apply to the minimum term of imprisonment, and left intact the 1983 language currently found in NRS 209.4465(7)(b). This indicates that the Legislature intended that language to apply to the new min-max statutes the same way it had been applied to parole eligibility statutes immediately following its original enactment. It is also possible the Legislature preserved the language to

address any determinate sentencing statutes that remained on the books or were potentially created in the future.

Where, as here, the legislative intent is apparent and the effort to give meaning to every portion of a statute frustrates that intent, and creates conflicts between statutes that would not otherwise exist, Nevada case law requires this Court to interpret the statute in a way that maintains harmony and gives effect to legislative intent. *See Sanchez-Dominguez*, 130 Nev. at ____, 318 P.3d at 1068; *Lucero*, 127 Nev. at 95, 249 P.3d at 1228; *Savage*, 123 Nev. at 95, 157 P.3d at 703.

2. The *VonSeydewitz* panel's interpretation of the statutes creates additional problems.

Not only does the panel's decision in *VonSeydewitz* ignore the legislative intent, but it also leads to an absurd result. When the Legislature enacted AB 510 in 2007, the enactment expressly made its amendatory provisions retroactive to the year 2000 in order to apply credits to the minimum sentences of certain C, D, and E felons. *See* 2007 Nev. Stat., ch. 525, § 21, at 3196. If the pre-2007 language in NRS 209.4465(7)(b) permitted the application of credits to the minimum terms of all min-max sentences, those inmates would have already been entitled to the application of credits to their minimum sentences because all C, D, and E felonies have been punishable by min-max sentences since 1995. The 2007 Nevada Legislature obviously understood that the language in NRS 209.4465(7)(b) did not permit the application of statutory credits to the minimum term of a min-max

sentence. The panel's interpretation of NRS 209.4465(7)(b) in *VonSeydewitz* sought to avoid nugatory language, but it merely created different nugatory language in the 2007 enactment.

The *Vonseydewitz* panel likewise erred when it created a conflict in the statutes. The panel's interpretation of NRS 209.4465(7)(b) rendered it at odds with NRS 213.120(2). *See Vonseydewitz*, 2105 WL 3936827, at *3. Rather than recognizing that its statutory interpretation was the very cause of the conflict, the panel stated its intention to render the statutes in harmony by interpreting NRS 209.4465(7)(b) as a specific exception to NRS 213.120(2). *Id.* But this makes very little sense. NRS 209.4465, which governs the application of meritorious, work, and good-time credits to all sentences for all inmates who committed crimes after 1997, is a much broader and more general statute than NRS 213.120, which specifically governs the calculation of a prisoner's parole eligibility. The *VonSeydewitz* panel's description of NRS 209.4465 as the more specific statute creating an exception to the parole statute was a transparent and illogical attempt to resolve a problem of the panel's own making. The alternative interpretation of NRS 209.4465(7)(b), the interpretation that has been adopted by every other court to consider the issue, renders the two statutes in harmony.

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/ / /

CONCLUSION

In the late 1990s and early 2000s, the Nevada Legislature clearly intended that all offenders "serve the minimum term of imprisonment imposed by their sentence before becoming eligible for parole," and they passed laws accomplishing that goal. 1995 Nev. Stat., ch. 443, at 1167. Williams has never been entitled to the application of statutory credits to her minimum sentences. The decision of the district court was correct, and its order should be affirmed.

Dated: November 4, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on November 4, 2016.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ Sonya M. Koenig
Sonya M. Koenig, an employee of the Office of the Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,455 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: November 4, 2016.

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