

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERARDO PEREZ,

Appellant,

v.

BRIAN WILLIAMS, WARDEN,

Respondent.

Case No. 75001

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Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO REISSUE ORDER AS A PUBLISHED OPINION

Attorney General Aaron D. Ford, by and through counsel, Jessica Perlick, Senior Deputy Attorney General, moves this Court to reissue its disposition in this case as a published opinion. This timely motion for publication is made under Rule 36(f) of the Nevada Rules of Appellate Procedure, and is supported by the accompanying memorandum of points and authorities.

MEMORADUM OF POINTS AND AUTHORITIES

Since 2015, inmate litigation regarding the application of statutory good-time credits has overwhelmed the court system. As this Court is aware, the Attorney General's Office responds to all petitions for writ of habeas corpus challenging the calculation of time served, which includes the application of NRS 209.4465. In 2017, our office responded to 895 petitions; in 2018, that number rose to 1,186.

In these petitions, one common challenge involves the issue addressed in this appeal: whether an inmate who is serving a sentence for a deadly weapon enhancement under the pre-2007 version of NRS 193.165 is eligible to apply his good time credits to the minimum term of his sentence. Publication of this Court's decision would provide clear authority to the district courts, and affirm the binding nature of this Court's disposition.

The *Perez* decision meets the criteria for publication outlined in NRAP 36(c)(1). First, there is no published authority from either this Court or the Court of Appeals analyzing the application of NRS 209.4465(7) to an inmate sentenced under the pre-2007 version of NRS 193.165(1). Because there is no published opinion addressing this issue of statutory interpretation, it is a matter of first impression, warranting publication. NRAP 36(c)(1)(A).

Even if this Court does not consider this a matter of first impression, then the *Perez* decision still meets the second criteria for publication because it “significantly clarifies a rule of law previously announced...” *Id.* at (B). In *Williams v. State Dep't of Corr.*, this Court held that an inmate who committed his offense prior to the 2007 amendments to NRS Chapter 209 can apply good time credits to the minimum term of his sentence if he was sentenced under a “minimum-maximum¹” sentencing

¹ A statute which provides for a sentence of “a minimum term of not less than [x] years and a maximum term of not more than [y] years.”

statute. 402 P.3d 1260, 1264-65 (Nev. 2017). *Williams* contrasted these “minimum-maximum” sentencing statutes with “parole eligibility” statutes, which mandate the minimum time an inmate must serve prior to becoming eligible for parole. *Id.* at 1263. An inmate sentenced under a parole eligibility statute is not eligible to have credits applied to his minimum sentence. *Id.* at 1264.

Perez significantly clarifies the rule set forth in *Williams* because the deadly weapon enhancement sentencing statute is neither a “minimum-maximum” nor “parole eligibility” statute. Rather, as this Court clarified, NRS 193.165(1), as it existed prior to 2007, “expressly relied on the sentencing statute for the primary offense.” In other words, the inmate’s sentencing statute for the primary offense controls the application of NRS 209.4465(7). In so holding, *Perez* significantly clarifies both when the *Williams* rule applies, and when it does not. This significant clarification supports publication. NRAP 36(c)(1)(B).

The final consideration supporting publication is when the opinion “[i]nvolves an issue of public importance that has application beyond the parties.” *Id.* at (C). *Perez* easily meets this criteria. In recent months, the Attorney General’s Office responded to arguments regarding the deadly weapon enhancement issue in the following cases²:

- *Gaston v. Howell*, A-18-773189-W

² This list serves as a representative sample from cases filed in Clark County, and does not reflect every case in which this issue has arisen.

- Webb v. Howell, A-18-776348-W
- Holliday v. Howell, A-18-773978-W
- Chapman v. Nevada Dept. of Corr., A-18-779338-W
- Benson v. NDOC, A-18-773449-W
- Velasco v. State of Nevada, A-18-767097-W
- Barron v. State of Nevada, A-17-766387-W
- Love v. Warden Nevens, A-17-766498-W
- Lee v. State of Nevada, A-17-165446-W
- Singer v. State of Nevada, A-17-765536-W
- Gillihan v. Nev. Dept. of Corr., A-19-786832-W
- Cruz v. Dzurenda, A-18-785321-W and A-19-788209-W
- Satterfield v. Dzurenda, A-18-786330-W
- Greene v. Nevada, A-18-782573-W
- Smith v. Nevada, A-18-778848-W
- Jones v. Warden Neven, A-18-775597-W
- Smith v. Howell, A-18-779336-W
- Moten v. Nevada, A-18-773183-W
- Pickett v. Nevada, A-18-772723-W
- Pineda v. Nevada, A-18-772389-W
- Keen v. Gentry, A-18-769622-W
- Lewis v. Nevada, A-18-769616-W
- Cervantes v. Howell, A-18-785623-W

Although the Nevada Court of Appeals issued a number of unpublished orders³ addressing the deadly weapon enhancement, NRAP 36(c)(3) precludes the

³ *Guerrero v. Gentry*, Case No. 72593-COA, 2019 WL 1255266 (Nev. App., Mar. 14, 2019); *Shaw v. Russell*, Case No. 75683-COA, 2019 WL 398335 (Nev. App., Jan. 25, 2019); *Garcia v. State*, Case No. 74790-COA, 2018 WL 672281 (Nev. App., Dec. 19, 2018); *Garcia v. Williams*, Case No. 75460, 2018 WL 5767101 (Nev. App., Oct. 12, 2018); *Hernandez v. Gentry*, Case No. 74972, 2018 WL 4846387 (Nev. App., Sept. 26, 2018); *Chavez v. Williams*, Case No. 73736, 2018 WL 4190757 (Nev. App., Aug. 14, 2018); *Elliott v. State*, Case No. 74016, 2018 WL 4190758 (Nev. App., Aug. 14, 2018); *Redeker v. Williams*, Case No. 74194, 2018 WL 3600005 (Nev. App., July 17, 2018); and *Ford v. Gentry*, Case No. 74973, 2018 WL 3602966 (Nev. App., July 17, 2018).

Attorney General from citing to the orders for any purpose. And while this Court has also issued orders⁴ referencing or analyzing the deadly weapon issue, none are published and thus do not establish mandatory precedent. NRAP 36(c)(2). The *Perez* decision has significant application beyond the parties, warranting publication.

CONCLUSION

The Attorney General's Office respectfully requests that this Court reissue its order in *Perez v. Williams* as a published opinion.

Dated March 28, 2019.

AARON D. FORD
Attorney General

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⁴ *Garcia v. Williams*, Case No. 71374, 2017 WL 5034469 (Nev., Nov. 1, 2017); *Deloney v. Baker*, Case No. 76226, 2019 WL 912671 (Nev., Feb. 20, 2019); *Perez-Solis v. Williams*, Case No. 72684, 2017 WL 5127708 (Nev., Nov. 3, 2017); *Hankston v. Wickham*, Case No. 71529, 2017 WL 5127348 (Nev., Nov. 3, 2017); *Wilson v. State*, Case No. 72570, 2017 WL 5127709 (Nev., Nov. 3, 2017); *Rodriguez v. Williams*, Case No. 72390, 2017 WL 5127710 (Nev., Nov. 3, 2017); *Tucker v. Williams*, Case No. 72074, 2017 WL 5127712 (Nev., Nov. 3, 2017).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Motion to Reissue Order as a Published Opinion* in accordance with this Court's electronic filing system and consistent with NEFCR 9 on March 28, 2019.

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.

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