

FILED

SEP 20 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

Willie Terry Carter #1114323
High Desert State Prison
22010 Cold Creek Rd
P.O. Box 650
Indian Springs, NV 89070

In The Supreme Court of Nevada
District Court
Clark County, Nevada

Case No. C-13-292507-2

Willie Terry Carter #1114323
Petitioner/Plaintiff/

Dept No. IX

-vs-

Brian Williams (Warden)
Respondant/Defendant

Petition for Writ of Habeas Corpus (Post Conviction)
Challenge of Computation of Time

Comes now, petitioner/plaintiff Willie Terry Carter proper, and respectfully moves this honorable court to issue A petition for writ of Habeas Corpus, being filed contemporaneously herewith directing Brian Williams, warden of High Desert State Prison to award statutory good time credits to the minimum period of his sentence.

This motion is made and based pursuant to the supporting points and authorities attached hereto as well as all papers, pleadings, documents on file in this case, as well as oral arguments deemed necessary by this honorable court date this 5th day of September 2017

Respectfully Submitted

[Signature]
Willie Carter

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Statement of Facts

The Petitioner/Plaintiff Willie Terry Carter being found guilty of the crimes of Count 1 and 2 - Robbery with the use of a Deadly Weapon (Category B Felony) in violation of NRS 200.380, 193.165; and Count 3 - Attempt Murder (Category B Felony) in violation of NRS 200.010, was sentenced on the 7th day of January, 2014 as follows:

As to Count 1 and 2 - Robbery with the use of a Deadly Weapon 6 to 15 years concurrent with Count 3 - Attempt Murder 6 to 20 years consecutive to the Deadly Weapon Enhancement of Counts 1 and 2 - 6 to 15 years. The imposed sentence is to be served in the Nevada Department of Corrections. Since his confinement to the Nevada Department of Corrections, the Petitioner has earned statutory credits. However those credits have not been applied/deducted from his minimum sentence by the Nevada Department of Corrections.

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Points And Authorities

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Legal Argument

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I. Nevada Department of Corrections

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is not deducting statutory credits earned

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pursuant to NRS 209.4465 from minimum

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sentences in violation of NRS 209.4465(7)(b).

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Petitioner/Plaintiff Carter claims that the Nevada Department of Corrections has misapplied AB510 to restrict him from earning statutory good time credits from the minimum portion of his sentence.

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NRS 209.4465 provides that, in relevant part, that

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statutory credits allowed under that statute "apply to

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eligibility for parole unless the offender was sentenced

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pursuant to a statute which specifies a minimum

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sentence that must be served before a person becomes

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eligible for parole. NRS 209.4465(7)(b) does not preclude

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credit application to the minimum term. However, Nevada

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Department of Corrections systematically restricts

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all inmates, including the plaintiff, from statutory

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credits earned from their minimum sentence applying

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NRS 209.4465(8) in violation of the Ex Post Facto

28

Clause.

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A statute violates the Ex Post Facto Clause when
(na 3)

1 it imposes more punishment for an offense than
2 was allowed at the time it was committed Wheeler
3 450 U.S. at 28; Goldswordkey, 86 N.W.2d at 255, 468
4 P.2d at 352. There are two elements to the inquiry
5 into whether a law is "ex post facto": it must be
6 retrospective, that is, it must apply to events occurring
7 before its enactment, and it must disadvantage
8 the offender affected by it." Wheeler, 450 U.S. at 29 (quoting
9 omitted). NRS 209.4465(8) disadvantages the Plaintiff
10 in the fact that the language in the statute conflicts
11 with the language in NRS 209.4465(7)(b). The statute
12 clearly satisfies the second prong. Changes to the
13 application of credits effectively alter the amount of
14 time a prisoner must serve, so any reduction
15 in the amount of (time) credits applied disadvantages
16 the prisoner. Wheeler, 450 U.S. at 32-34. When NRS 209.
17 4465 was enacted, only the statutes for certain category
18 A felonies specified a minimum sentence that had to
19 be served before a convicted offense would become eligible
20 for parole. See e.g. NRS 200.320(1). Thus offenders
21 convicted of felonies that were not category A felonies were
22 entitled to have statutory credits deducted from the minimum
23 term imposed. The Plaintiff/Petitioner is not convicted
24 of a category A felony.

25 Alternatively, the plain language of NRS 213.120(2)
26 and NRS 209.4465(7) appears to be in conflict. The plain
27 language of NRS 213.120(2) provided that credits under
28 NRS chapter 209 "must not reduce the minimum term of
29 imprisonment" whereas NRS 209.4465(7) provided that those
(m.c.)

1 Credits could apply to parole eligibility unless the sentencing
2 statute "specifies a minimum sentence that must be served
3 before a person becomes eligible for parole."

4 "Words in a statute should be given their plain
5 meaning unless this violates the spirit of the act" Nobay
6 v Bd. of Sup's of Carson City, 107 Nev. 644, 648, 730 P.2d

7 438, 441 (1986). Both the plain language and the legislative
8 history of NRS 213.120(2) are clear that the intent was

9 to ensure that convicted felons served a minimum period of
10 time and could not be paroled before that minimum period
11 of time had been served. Hearing on S.B. 416 before the

12 Senate Subcommittee on Judiciary, 68th Leg. The legislative

13 history of NRS 209.4465 is silent as to its intent regarding
14 parole. However, a person becomes eligible for parole once they
15 have served the minimum term of imprisonment, and since

16 NRS 209.4465 (7)(b) allows for the application of statutory
17 credits to parole eligibility, the plain language of the statute
18 clearly contemplates the deduction of statutory credits "

19 from the minimum term of imprisonment. Thus there

20 is an existing statute that prohibits deducting NRS chapter

21 209 credits from the minimum term of imprisonment, coexisting

22 with a new statute that allowed such deductions except in

23 certain circumstances.

24 When two statutes cannot be "interpreted in a way that
25 renders them compatible, not contradictory," Antonin Scalia and

26 Bryan A. Garner, Reading Law: The Interpretation of Legal Texts

27 180 (2012), the newer and/or more specific statute, and it

28 specific provisions should generally take precedence, Lader v

29 Warden, 121 Nev. 682, 687, 120 P.3d 1164, 1167 (2005) Scalia and

1 LARNER SUPRA AT 183, 185 NRS 209.4465(7)(b) is the
2 more recently enacted statute, and its specific provisions
3 allowing the deduction of statutory credits from the eligibility
4 for parole should take precedence over the more general
5 prohibition in NRS 213.120(2). Accordingly, NRS 209.4465(7)(b)
6 would be the controlling statute for determining the
7 deduction of statutory credits from Carter's minimum
8 term of imprisonment.

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12 II. Conclusion

13 Wherefore, all of the above state reasons, Petitioner
14 Plaintiff respectfully request this Honorable Court to order
15 Brian Williams Sr to deduct statutory credits from
16 Petitioner's minimum term of imprisonment.

17 Dated this 26 day of December 2016

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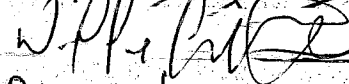
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Respectfully submitted



Petitioner/Plaintiff

CERTIFICATE OF SERVICE BY MAILING

I, Willie Terry Carter, hereby certify, pursuant to NRCP 5(b), that on this 5
day of September, 2017, I mailed a true and correct copy of the foregoing, "Writ of
Habeas Corpus (Challenge of Computation of Time)"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Brian Williams
22010 Cold Creek Rd
Indian Springs, NV
89070

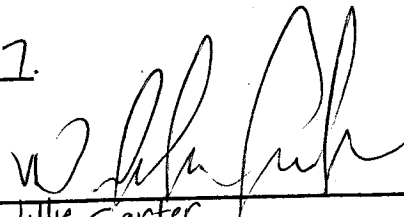
Clark County DA's office
200 Lewis Ave
Las Vegas, NV 89115

Clerk of the Court
200 Lewis Ave
Las Vegas NV 89115

Nevada Supreme Court
Supreme Court Building
201 S. Carson St Suite #201
Carson City NV 89701-4702

CC:FILE

DATED: this 5 day of September, 2017.


Willie Carter #1114323

/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: