

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

WILLIE JAMES MAJOR,

Petitioner,

v

File No. 06-25115-AH
HON. PHILIP E. RODGERS, JR.

MICHIGAN DEPARTMENT OF CORRECTIONS
and THOMAS A. PHILLIPS, WARDEN; JAMES
STEPHENS, DEPUTY WARDEN; BECKY
KOSLOWSKI, RECORDS OFFICE SUPERVISOR;
DAWN PURUSKI, A.R.U.S.; P. FEDOROWICSA,
R.U.O.; M. DAY, R.U.O.,

Respondents.

Willie James Major #097216
Petitioner in Pro Per

Jason Julian (P39547)
Attorney for Respondents

DECISION AND ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS
AND PETITIONER'S MOTION FOR SUMMARY DISPOSITION

The Petitioner Willie James Major was convicted of two counts of criminal sexual conduct in the first degree. On June 17, 1978, he was sentenced to two consecutive terms of 25 to 70 years confinement in the Michigan Department of Corrections. He is currently housed at the Pugsley Correctional Facility in Grand Traverse County, Michigan.

On March 16, 2006, Petitioner filed a Petition for Writ of Habeas Corpus to Inquire into Cause of Detention. On March 29, 2006, the Court issued an Order to Show Cause giving the Respondents 35 days from the date of the Order to show cause why the writ should not be issued and giving the Petitioner 42 days from the date of the Order to reply. These time limits have now expired.

The Respondents filed a response. In lieu of a reply, the Petitioner filed a Motion for Summary Disposition. The Court, having reviewed the submissions, dispenses with oral argument and, for the reasons stated herein, denies the Petition and the Motion for Summary Disposition.

Petitioner contests the legality of the methods and procedures used in calculating the length of his detention. He contends that he should have been discharged on December 3, 2005, but that Respondents violated his constitutionally protected due process rights and arbitrarily and capriciously withheld 4,948 days of special good time credit thereby extending his discharge date to June 21, 2019.

MCL 800.33 provides, in pertinent part, as follows:

(1) A record of all major misconduct charges for which a prisoner has been found guilty shall be maintained and given to the parole board as part of the parole eligibility report prepared for each prisoner pursuant to section 35 of 1953 PA 232, MCL 791.235.

(2) Except as otherwise provided in this section, a prisoner who is serving a sentence for a crime committed before April 1, 1987, and who has not been found guilty of a major misconduct or had a violation of the laws of this state recorded against him or her shall receive a reduction from his or her sentence as follows:

(a) During the first and second years of his or her sentence, 5 days for each month.

(b) During the third and fourth years, 6 days for each month.

(c) During the fifth and sixth years, 7 days for each month.

(d) During the seventh, eighth, and ninth years, 9 days for each month.

(e) During the tenth, eleventh, twelfth, thirteenth, and fourteenth years, 10 days for each month.

(f) During the fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth years, 12 days for each month.

(g) From and including the twentieth year, up to and including the period fixed for the expiration of the sentence, 15 days for each month.

* * *

(6) On and after April 1, 1987, a prisoner shall not earn good time under this section during any month in which the prisoner is found guilty of having committed a major misconduct. The amount of good time not earned as a result of being found guilty of a major misconduct shall be limited to the amount of good time that would have been earned during the month in which the major misconduct occurred. Any good time not earned as a result of the prisoner being found guilty of a major misconduct shall never be earned or restored.

* * *

(12) The warden of an institution may grant special good time allowances to eligible prisoners who are convicted of a crime that is committed before April 1, 1987. Special good time credit shall not exceed 50% of the good time allowances under the schedule in subsection (2). Special good time shall be awarded for good conduct only and shall not be awarded for any month in which a prisoner has been found guilty of a major misconduct.

* * *

(14) A prisoner subject to disciplinary time is not eligible for good time, special good time, disciplinary credits, or special disciplinary credits. [Emphasis added.]

* * *

First, the Petitioner claims that the Respondents are using the denial of special good time credits to unlawfully engage in “secondary sentencing” because not awarding him the maximum good time credits extends his sentence. This argument is untenable.

“A prisoner enjoys no constitutional or inherent right to be conditionally released from a validly imposed sentence.” *Morales v Parole Bd*, 260 Mich App 29, 48; 676 NW2d 221 (2003), citing *Jones v Dep’t of Corrections*, 468 Mich 646, 651; 664 NW2d 717 (2003); *Hurst v Dep’t of Corrections, Parole Bd*, 119 Mich App 25, 28-29; 325 NW2d 615 (1982). The Petitioner was sentenced to a maximum of 70 years confinement. The Parole Board has exclusive jurisdiction and discretion to parole a prisoner or order a continuance. MCL 791.204; MCL 791.234(9); *In re Parole of Roberts*, 232 Mich App 253, 256; 591 NW2d 259 (1998); *In re Wayne Co Prosecutor*, 232 Mich App 482, 484; 591 NW2d 359 (1998). The length of the continuance can range from one day to the maximum sentence imposed for the original offense. *Id* at 486; 591 NW2d 359; *Blank v Dep’t of Corrections*, 462 Mich 103; 611 NW2d 530 (2000). While awarding good time credits may reduce the time between one parole consideration and the next,

nothing that the Respondents do with respect to granting or withholding special good time credits can extend his sentence beyond 70 years.

Second, the Petitioner claims that the Respondents violated his due process rights as guaranteed by the United States and Michigan Constitutions by not awarding him the maximum available special good time credits.

In *Wolff v McDonnell*, 418 US 539, 557; 94 S Ct 2963; 41 L Ed 2d 935 (1974), the United States Supreme Court stated that there is no constitutional right to good-time credit. In *Tessin v Dep't of Corrections (After Remand)*, 197 Mich App 236, 241; 495 NW2d 397 (1992), the Court noted that although there is nothing in the United States constitution that requires the granting of good-time credits, once a state adopts good-time credit provisions **and a prisoner earns credit**, the deprivation of that good-time credit constitutes a substantial sanction, and a prisoner can properly claim that a deprivation of good-time credit is a denial of a protected liberty interest without due process of law.

Special good time credits are not automatically earned. The warden, in his discretion, may award them. MCL 800.33(12). Therefore, the Petitioner did not have a constitutionally protected liberty interest in the special good time credits that the warden did not award to him. Nor did he suffer a forfeiture of special good time credits when the warden granted less than the maximum possible amount of special good time credits available. This interpretation of MCL 800.33(12) is further supported by the Michigan Court of Appeal unpublished decision in *Dean V Langworthy v Dep't of Corrections*, No. 211314; lev den Mich No. 115936, May 31, 2000 wherein the Court held that the warden must grant special good time credits “before a liberty interest detected by due process can exist.”

Finally, the Petitioner is also mistaken in his contention that the Warden is required to award him the maximum number of special good time credits available because he has not had a major misconduct ticket in almost ten years and any misconduct tickets he had were taken into consideration and dealt with in the past. Pursuant to MCR 800.33(2), regular good time credits are automatically earned each month if the inmate is misconduct free and automatically lost if the inmate commits a major misconduct. Special good time credits, on the other hand, are awarded at the discretion of the warden and may or may not be awarded each month. The warden is only limited by the prohibition against awarding special good time credits “for any month in which a prisoner has been found guilty of a major misconduct.” MCL 800.33(12). In

other words, the warden *must* decline to award an inmate special good time credits when he has a major misconduct and the warden *may* decline to award an inmate special good time credits even if the inmate does not commit a major misconduct.

For all of the reasons stated herein, the Petitioner's Petition for Writ of Habeas Corpus is denied. The Petitioner's Motion for Summary Disposition is also denied.

IT IS SO ORDERED.

This Decision and Order resolves the last pending claim and closes the case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: S/ 05/24/06