

FILED: January 30, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ALFONSO CAMPBELL,
Plaintiff-Appellant,

v.

STATE OF OREGON,
DEPARTMENT OF CORRECTIONS,
BOARD OF PAROLE AND POST-PRISON SUPERVISION,
and OFFENDER INFORMATION AND SENTENCE COMPUTATION UNIT,
Defendants-Respondents.

Multnomah County Circuit Court
101115816

A150123

Karin Johana Immergut, Judge.

Argued and submitted on December 18, 2012.

William J. Macke argued the cause and filed the briefs for appellant.

Jennifer S. Lloyd, Attorney-in-Charge, Criminal Appeals, argued the cause for respondents. On the brief were John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Matthew J. Lysne, Assistant Attorney General.

Before Armstrong, Presiding Judge, and Duncan, Judge, and Brewer, Judge pro tempore.

BREWER, J. pro tempore.

Affirmed.

1 BREWER, J. pro tempore

2 Plaintiff, a former inmate who was incarcerated in the custody of the
3 Oregon Department of Corrections (DOC), appeals from a judgment dismissing this
4 negligence action in which he sought damages against defendants¹ for what he asserted
5 was a two-year period of unlawful imprisonment after his sentences for various criminal
6 offenses should have been discharged. The trial court dismissed the action after granting
7 defendants' motion for a directed verdict on the ground that plaintiff failed to adduce
8 evidence that he had been unlawfully imprisoned. We affirm.

9 When we review a grant of a directed verdict, we view the facts in the light
10 most favorable to the party opposing that motion--in this case, plaintiff. *See Boothby v.*
11 *D. R. Johnson Lumber Co.*, 341 Or 35, 38, 137 P3d 699 (2006) (using that standard). The
12 facts, which we recount without unnecessary detail, are essentially undisputed. On
13 November 8, 1983, plaintiff was sentenced to a 20-year indeterminate sentence for first-
14 degree burglary. After serving a two-year prison term, plaintiff was paroled for that
15 offense on November 10, 1985. Plaintiff thereafter violated his parole, which was
16 revoked on March 3, 1986. Plaintiff received an eight-month imprisonment sanction for
17 the parole violation, and the Board of Parole and Post-Prison Supervision (the board) set
18 a release date of October 9, 1986.

19 On August 8, 1986, plaintiff was convicted of first-degree kidnapping and
20 sentenced to an eight-year indeterminate sentence consecutive to the burglary sentence.

¹ Defendants are DOC and the Board of Parole and Post-Prison Supervision.

1 The board established a 52-month prison term for the kidnapping conviction. On
2 February 8, 1991, plaintiff was paroled again. On October 17, 1991, the board imposed a
3 180-day prison sanction after plaintiff committed a parole violation. That sanction
4 commenced on the date of plaintiff's arrest for the parole violation, August 17, 1991, and
5 it ended on February 12, 1992, when plaintiff was once again paroled.

6 Meanwhile, however, on February 7, 1992, plaintiff was convicted of first-
7 degree robbery and was sentenced to 180 months' imprisonment under the sentencing
8 guidelines, to be served consecutively to his previously imposed indeterminate sentences.
9 Plaintiff successfully appealed that sentence and, on remand, he was resentenced on May
10 14, 1993, to a 130-month term of imprisonment that the court imposed concurrently with
11 his previously imposed indeterminate sentences. Although plaintiff does not address
12 these facts in his brief on appeal, the record indicates that he also had consecutive
13 guidelines sentences on convictions for second-degree assault and supplying contraband.
14 Plaintiff subsequently was paroled on his indeterminate kidnapping sentence (and placed
15 on post-prison supervision for his guidelines offenses) in June 2005.

16 On November 21, 2007, the board sentenced plaintiff to a 24-month prison
17 term for violating the conditions of his parole. Plaintiff was once again released on
18 parole on November 20, 2009. The board discharged plaintiff's kidnapping sentence on
19 January 15, 2011.

20 In this action, plaintiff alleged that defendants negligently calculated his
21 two consecutive indeterminate sentences (burglary and kidnapping) and that, as a result,

1 plaintiff served an unlawful prison term when the board sanctioned him for a parole
2 violation in 2007. If the board had properly calculated those sentences, plaintiff asserts,
3 it would have ascertained that they had been discharged before he was released from
4 prison in June 2005. It follows, plaintiff reasons, that the board unlawfully treated him as
5 a parolee on his release from prison in 2005 and lacked jurisdiction to sanction him for a
6 later violation of parole. Plaintiff asserted that he had been damaged by reason of that
7 unlawful imprisonment.

8 At trial, plaintiff elaborated the following two-pronged theory of
9 defendants' negligence. First, according to plaintiff, DOC failed to adjust his kidnapping
10 sentence "to account for the 58 months plaintiff served on that sentence between 1986
11 and 1993." According to plaintiff, DOC breached its duty to him by failing to adjust his
12 maximum sentence date on the kidnapping conviction to reflect that combined 58-month
13 period of imprisonment. Plaintiff relies on a "February 20, 2004 DOC face sheet
14 showing a 'termination date' on the Burglary-I sentence of '11/05/2003' and a 'MAX
15 sentence date' on the Kidnapping-I of '10/26/2011.'" Instead, plaintiff asserts, "[t]his
16 facesheet should have reflected the 58 months plaintiff had already served on the
17 Kidnapping-I sentence, which would have resulted in a 'MAX sentence date' no later than
18 January 5, 2007--more than 11 months prior to his incarceration for a parole violation on
19 that sentence."

20 In the second prong of his theory, plaintiff asserts that, throughout his 130-
21 month prison term on the conviction for first-degree robbery, he was entitled to accrue

1 "good-time credits" on his previously imposed concurrent indeterminate sentences for
2 first-degree burglary and first-degree kidnapping. If he had received those credits,
3 plaintiff argues, those indeterminate sentences would have been discharged before he was
4 released from prison in June 2005. Plaintiff notes that the total term of his sentence for
5 robbery was 4,865 days. From that starting point, he explains:

6 "As of October 17, 1991, the Board had calculated an expiration date of
7 plaintiff's indeterminate sentences of June 8, 2011 (as argued above,
8 plaintiff disputes the accuracy of this calculation). From February 7, 1992,
9 this computes to a duration of 7,061 days, which would establish a good-
10 time date at 4,707 days, or December 27, 2004. From May 14, 1993, this
11 computes to a duration of 6,599 days, which would establish a goodtime
12 date at 4,399 days, or May 30, 2005. Plaintiff did not forfeit any good time
13 during this period, and would have reached both of those dates prior to his
14 release on June 2, 2005, which should have resulted in a discharge of those
15 sentences."

16 Plaintiff observes that, throughout an inmate's prison term, the board is
17 required to update the inmate's good-time date to reflect credits or deductions that the
18 inmate accumulates under an indeterminate sentence. *See Erbs v. Board of Parole*, 90 Or
19 App 253, 255, 752 P2d 318 (1988) (describing good-time calculation process). Plaintiff
20 asserts that, when he was resentenced on the robbery conviction in 1993 and that
21 sentence was imposed concurrently with his prior sentences, defendants "should have
22 recalculated his good-time date so as to shorten his indeterminate sentences." Plaintiff
23 concludes:

24 "By any reasoned calculation, Plaintiff reached the good-time date that the
25 Board should have established on the indeterminate sentences and those
26 sentences should have been discharged at that time. The Board and DOC
27 breached their duty to plaintiff to correctly compute and administer his

1 sentences by failing to adjust his good-time date and timely discharge his
2 Kidnapping-I and Burglary-I sentences."

3 In order to properly analyze plaintiff's claim, it is necessary to briefly
4 descend into the labyrinth of the history of the Oregon sentencing system. The
5 legislature adopted the indeterminate sentencing scheme informally known as the matrix
6 system in 1977, and that scheme remained in effect until the guidelines system went into
7 effect on November 1, 1989. Under the matrix system, a sentencing court sentenced an
8 offender to an indeterminate term within the maximum sentence allowable under ORS
9 161.605 for the offense of conviction. The prison term was established by the board
10 under rules adopted for that purpose. ORS 144.120. The board set an initial parole
11 release date within a matrix range for the offense or offenses of conviction. ORS
12 144.120(2); ORS 144.780. Although the offender's initial prison term as established by
13 the board under the matrix ended with his release on parole, the offender had not yet fully
14 served his sentence. *Haskins v. Palmateer*, 186 Or App 159, 165, 63 P3d 31, *rev den*,
15 335 Or 510 (2003). The board's authority over the offender extended until the end of the
16 indeterminate sentence imposed by the court. *Former* ORS 144.310 (1987), *repealed by*
17 Or Laws 1993, ch 680, § 7. Alternatively, the board could, but did not need to, discharge
18 an offender before the end of the judicially imposed sentence. *Former* ORS 144.310;
19 *Haskins*, 186 Or App at 165-66.

20 In 1989, the legislature overhauled the state's sentencing law and adopted
21 what are known as the "sentencing guidelines." In brief, the new legislation provided
22 that, for felonies committed on or after November 1, 1989, trial courts must impose a

1 "presumptive sentence" determined by reference to the rules of the Oregon Criminal
2 Justice Commission, unless the courts make certain findings that would justify a
3 departure from the presumptive sentence. Or Laws 1989, ch 790; *see generally State v.*
4 *Davis*, 315 Or 484, 486-89, 847 P2d 834 (1993) (summarizing sentencing guidelines
5 legislation). Because defendant committed his robbery offense after November 1, 1989,
6 that offense, unlike his earlier offenses, was sentenced under the guidelines scheme.

7 With respect to plaintiff's prior indeterminate sentences, ORS 421.120
8 established a formula by which DOC may reduce an inmate's indeterminate sentence if
9 the prisoner "faithfully has observed the rules of the institution." ORS 421.120(2). The
10 reduction is known as "good time." ORS 421.120 provides, in part:

11 "(2) Each inmate confined in execution of the judgment of sentence
12 upon any conviction in the Department of Corrections institution, for any
13 term other than life, and whose record of conduct shows that the inmate
14 faithfully has observed the rules of the institution, shall be entitled to a
15 deduction from the term of sentence to be computed as follows:

16 "* * * * *

17 "(b) From the term of a sentence of more than one year, one day
18 shall be deducted for every two days of the sentence actually served in the
19 Department of Corrections institution.

20 "* * * * *

21 "(5) When a paroled inmate violates any condition of parole, no
22 deduction from the term of sentence, as provided in subsection (2) of this
23 section, shall be made for service by the inmate in the Department of
24 Corrections institution prior to acceptance and release on parole, except
25 when authorized by the State Board of Parole and Post-Prison Supervision
26 upon recommendation of the superintendent thereof."

27 Generally, the sentence of an inmate who qualifies for good-time credit is adjusted by

1 deducting a certain number of days from the sentence imposed by the sentencing court.
2 *Id.*; see also *Neal v. Maass*, 94 Or App 119, 121, 764 P2d 947 (1988), *rev den*, 307 Or
3 405 (1989). At the beginning of an inmate's term of imprisonment, DOC calculates the
4 anticipated "good time" that the inmate would receive without any forfeitures and
5 projects the expected ending date of the reduced term of imprisonment. By rule, OAR
6 291-100-040, DOC is to certify the amount of good time actually credited to the inmate.
7 *Erbs*, 90 Or App at 255.

8 In *Erbs*, we held that, once an inmate's indeterminate sentence expires, the
9 inmate is discharged from the jurisdiction of DOC, and the board is thereafter without
10 authority to impose conditions of parole. *Id.* If a person remains incarcerated when the
11 good-time release date arrives, he or she is entitled to unconditional release, without a
12 period of supervised parole. *Id.* However, good time must be earned while an inmate is
13 confined on the subject offense. *Ventris v. Maass*, 99 Or App 85, 87-88, 781 P2d 1224
14 (1989), *rev den*, 309 Or 231 (1990). A person on parole is not confined on his or her
15 subject conviction, and is not serving a sentence on that conviction in an institution. *Id.*
16 at 88. "Therefore, when an inmate is released on parole, the accumulation of good time
17 stops and the previously calculated good time release date is suspended." *Id.*

18 In *Ventris*, we distinguished *Erbs*:

19 "This case is distinguishable from [*Erbs*], where the Board attempted to
20 parole an inmate *on*, rather than before, his good time release date. We
21 held that a confined inmate's term of sentence expires on his good time
22 release date and that on that date he was discharged from the jurisdiction of
23 the Department of Corrections and was not subject to parole. Here, in
24 contrast, plaintiff's term of sentence did not expire on his originally

1 projected good time release date. That date was calculated on the projected
2 time to be served in the penitentiary. *When he was released on parole, he*
3 *stopped receiving credit for good time* and never accumulated sufficient
4 credit to reach the projected good time release date. The Board, therefore,
5 did not lose jurisdiction over plaintiff when the projected date arrived. The
6 effect of the parole was to suspend plaintiff's good time release date and to
7 leave him without one, unless and until one was recomputed for him if his
8 parole was unsuccessful and he returned to the penitentiary."

9 *Ventris*, 99 Or App at 88 (first emphasis in the original; second emphasis added).

10 With that background, we return to the problem at hand. Plaintiff's
11 burglary and kidnapping sentences required him to serve combined consecutive sentences
12 of 28 years--or roughly from 1983 to 2011. As noted, petitioner was paroled a final time
13 in 2009, and the issuance of a certificate of discharge on January 15, 2011, ended
14 petitioner's service of his sentence on parole. ORS 144.310 (1985), which was in effect
15 at the time petitioner committed his kidnapping crime, provided that the board could
16 issue a "certificate of discharge" "[w]hen a paroled prisoner has performed the
17 obligations of parole for such time as satisfies the [board] that the prisoner's final release
18 is not incompatible with the prisoner's welfare and that of society." Here, the board
19 issued a certificate of discharge on plaintiff's sentence on January 19, 2011. Thus, on
20 issuance of that certificate, plaintiff no longer remained on parole supervision, and his
21 28-year sentences functionally expired.

22 With that understanding of plaintiff's sentences, it is apparent that
23 defendants did not negligently fail to account for the combined 58-month prison term that
24 plaintiff served on his kidnapping sentence between 1986 and 1993. Plaintiff's theory
25 rests on the mistaken premise that a prison term is identical to a "sentence." It is not.

1 ORS 144.120 (1985), which was in effect at the time plaintiff committed the crime of
2 kidnapping, provided, in part:

3 "(1) Within six months of the admission of a prisoner to any state
4 penal or correctional institution, the board shall conduct a parole hearing to
5 interview the prisoner and set the initial release date on parole pursuant to
6 subsection (2) of this section.

7 "(2) In setting the initial parole release date for a prisoner pursuant
8 to subsection (1) of this section, the board shall apply the appropriate range
9 established pursuant to ORS 144.780. * * *"

10 ORS 144.780(1) (1985), in turn, authorized the board to establish, by rule, "ranges of
11 duration for imprisonment to be served for felony offenses prior to release on parole." In
12 short, the "prison terms" established by the board to be served before plaintiff became
13 eligible for parole did not reduce the "sentences" that he was serving; rather they had to
14 do with when he would be eligible for parole. Stated differently, although plaintiff's
15 various prison terms were determinative of when he would be released on parole, they
16 did not alter the length of his sentences. *Haskins*, 186 Or App at 165.

17 Plaintiff is not correct that he served 58 months on his kidnapping sentence
18 between 1986 and 1993. Although the *prison term* for that offense was set in 1986 and
19 served as the basis for determining his eligibility for parole release, his eight-year
20 indeterminate *sentence* on that offense was to be served consecutively to his sentence for
21 burglary. At the time he was paroled on both of those offenses, he had served only a part
22 of the indeterminate burglary sentence. The kidnapping sentence necessarily was served
23 after the burglary sentence, not at the same time. Were plaintiff correct, then he would
24 have been serving the 58 months in question on both his burglary *and* his kidnapping

1 sentences--in effect, making them partially concurrent rather than consecutive.

2 As for plaintiff's remaining argument, we understand him to assert that he
3 was entitled to receive "good-time" credit on a portion of his indeterminate sentences that
4 ultimately was served, in part, concurrently with the guidelines robbery sentence. He
5 argues that our decision in *Shelby v. Board of Parole*, 244 Or App 348, 260 P3d 682, *rev*
6 *den*, 351 Or 507 (2011), supports his position; the board argues in response that *Shelby*
7 supports its position. We need not address whether or how *Shelby* might apply to the
8 issue as framed by plaintiff because the straightforward answer is that, even assuming
9 that the board should have credited him with good time during the concurrent sentence,
10 his arguments are based on the assumption that he was entitled to accrue good time not
11 only while he served the robbery sentence, but while he served the other, consecutive
12 guidelines sentences. What he fails to acknowledge is that, during some of his
13 subsequent prison time, he was serving additional *consecutive* guidelines sentences for
14 other crimes. Thus, even if we were to conclude that plaintiff were correct that, under
15 *Shelby*, he was entitled to "good time" for certain dates, we would not agree with his
16 ultimate conclusion that he would have reached his "good-time" date before he was
17 paroled, because plaintiff clearly was not entitled to accrue good-time credits on an
18 indeterminate sentence while he was serving other *consecutive* guidelines sentences. *See*
19 *Shelby*, 244 Or App at 353-54 (petitioner was not incarcerated on his indeterminate
20 sentences while he served his consecutive guidelines sentences).

21 Because neither of plaintiff's theories of unlawful imprisonment is sound,

1 the trial court did not err in granting defendants' motion for a directed verdict.²

2 Affirmed.

² We reject plaintiff's remaining assignments of error without discussion.