

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JEROME O. HERLIHY
JUDGE

DANIEL L. HERRMANN
COURT HOUSE
WILMINGTON, DE 19801-3353

October 3, 2001

Mr. Mel S. McAllister
Delaware Correctional Center
RD 1 - Box 500
Smyrna, DE 19977

RE: *State v. Mel S. McAllister*
Cr.A. No. IN-91-05-2035
ID No. 91005130

Dear Mr. McAllister:

You have filed a motion for "correction of sentence." The basis of that motion revolves around 11 *Del.C.* §1447 and the sentence of fifteen years which I imposed on you on January 24, 1992 (along with the life sentence for first degree murder).

You make two claims. One is that the SENTAC guidelines provide a presumptive sentence of two to five years. You contend this should have been your sentence. This Court is not bound by those guidelines and can impose any sentence up to the maximum allowed.¹ The maximum I could have imposed in 1992 was twenty years.

Your next claim is that you are entitled to receive good time during that fifteen-year sentence. That claim is not one to be made through a motion to correct a sentence. Nevertheless, I will consider it even though more appropriately presented by means of a writ of *mandamus*.

The argument for entitlement to good time is twofold. One, §1447 does not explicitly prohibit the Department of Correction from awarding it to you. Two, the recently enacted H.B. 174 which does now explicitly bar the award of good time means prior to that bill's enactment, you were entitled to get it.

The Court is aware that the Department of Correction for many years has not awarded good time for sentences under §1447. But, that is not the basis for this decision.

¹*Ward v. State*, Del.Supr., 567 A.2d 1296 (1989).

State v. Mel S. McAllister
Cr.A. No. IN-91-05-2035
ID No. 91005130
Page Two

I enclose a copy of a recent decision of this Court in *Rust v. Kearney*.² This decision interpreted statutes other than §1447 but ones which contained the same key language as here. The statutes were drug laws, specifically, 16 *Del.C.* §4763(a), which says any mandatory minimum "shall not be subject to suspension and no person shall be eligible for probation or parole during such portion of such minimum term." This Court held in *Rust* that this language prohibited the Department of Correction from awarding good time.

Section 1447 contains virtually identical language, namely, "[n]o person convicted for a violation of this section shall be eligible for parole or probation during the period of the sentence imposed."³ This was the language in effect on April 29, 1991 when you killed Steven Davis.⁴ In your case, this Court holds this language has the same effect as found in the drug statute interpreted in *Rust*. The language of §1447 bars the Department of Correction from awarding you good time.

In light of this holding, the legislature' s addition of the words "good time" to parole and probation ineligibility changed nothing substantive. The addition of those words, therefore, only made more clear the prohibition on awarding good time.

CONCLUSION

For the reasons stated herein, the motion for correction of sentence is **DENIED.**

IT IS SO ORDERED.

Sincerely,

JOH/bsb
Enclosure
Original to Prothonotary

²Del. Super., C.A.No. 01M-03-029, Graves, J. (September 27, 2001).

³11 *Del.C.* §1447(b).

⁴63 *Del. Laws* Ch. 412, 56 *Del. Laws* C. 324.