

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

SHAWN HOPKINS, : C.A. No. 05M-04-008
Petitioner, :
v. :
DAVE VINSON, :
Records Dept., SCI, :
Respondent. :

ORDER REGARDING MOTION TO PROCEED IN FORMA PAUPERIS
AND PETITION SEEKING WRIT OF MANDAMUS

DATE SUBMITTED: April 18, 2005

Pending before the Court are a motion to proceed in forma pauperis and a petition seeking a writ of mandamus regarding credit time (“petition”) which petitioner Shawn Hopkins (“petitioner”) has filed. This is my decision addressing both matters.

Petitioner has established that he is indigent. That determination, however, does not mean the matter can proceed automatically. Instead, the Court first must review the petition to determine if it is factually frivolous, malicious, or legally frivolous. 10 Del. C. § 8803(a), (b). If the petition fails to state a claim upon which relief may be granted, then it is deemed legally frivolous. See Gibbs v. Hewes, Del. Super., C.A. No. 98C-03-294, Del Pesco, J. (April 16, 1998). If the Court determines the petition is faulty because it is legally frivolous, malicious or factually frivolous, then the Court dismisses it. 10 Del. C. § 8803(b).

Petitioner herein seeks good time credits to which he claims entitlement. Before I can address the issues, I must set forth the facts concerning his sentences in the case of State v. Hopkins, Def. ID# 0106018355.

On December 5, 2001, petitioner entered into a plea of guilty to charges of possession of a deadly weapon during the commission of a felony (“PDWDCF”) and robbery in the first degree (“Robbery 1st”), which crimes were committed on June 24, 2001. On January 25, 2002, the Court sentenced him as follows. As to PDWDCF, he was sentenced to 2 years at Level 5 with credit for time served; this was stated to be a mandatory sentence pursuant to 11 Del. C. § 1447.¹ As to Robbery 1st, he was sentenced to 8 years at Level 5 and after serving 3 years at Level 5 and completing the Key Program, the balance was suspended for decreasing levels of probation. Robbery 1st and PDWDCF are Class B felonies. 11 Del. C. § 832(a). Accordingly, he could not be sentenced to Level 5 for a period of less than 2 years on each conviction. 11 Del. C. § 4205(b)(2).²

¹The applicable version of 11 Del. C. § 1447(b) provided:

Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for parole or probation during the period of the sentence imposed.

²In 11 Del. C. § 4205(b), it is provided:

The term of incarceration which the court may impose for a felony is fixed as follows:

(2) For a class B felony not less than 2 years up to 20 years to be served at Level V.

At the time the sentence was imposed, the prevailing opinion in the legal system was that even though the statute in effect at the time the crime was committed did not say so, good time credits could not be applied to a PDWDCF sentence. State v. McAllister, Del Super., Def. ID# 91005130, Herlihy, J. (Oct. 3, 2001). However, the Supreme Court ruled otherwise in the case of Pleasanton v. State, 817 A.2d 791(Del. 2003).³ Consequently, since the PDWDCF sentence was not a minimum, mandatory one, the sentence on the Robbery 1st conviction had to run first. 11 Del. C. § 1447(c).⁴ DOC made this correction to the sentence.

The term of imprisonment for the Robbery 1st sentence was for three years and until petitioner completed Key. He did not complete Key until 3 years, 2 months, and 23 days after the sentence commenced. DOC correctly calculated good time credits based upon the Level 5 time imposed on the Robbery 1st conviction.

Petitioner's first issue concerns this calculation regarding the Robbery 1st sentence. He maintains his good time should be calculated on 3 years, not 3 years, 2 months and 23 days. His argument is the calculation period runs 2 months, 23 days too long. For the reasons set forth above, this claim is meritless.

³The Supreme Court ruled that as of July 9, 2001, the statute was amended to clarify that good time credits could not be awarded, 73 Del. Laws., c. 107 (1991); thus, they must be awarded to sentences on PDWDCF crimes committed before July 9, 2001.

⁴ In 11 Del. C. § 1447(c), it is provided in pertinent part:

... In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.

The other issues concern petitioner's meritorious good time credits. Petitioner complains that he has not been awarded meritorious good time credits. As explained in Harris v. Snyder,

Del. Super., C.A. No. 98M-09-045, Carpenter, J. (March 26, 1999):

3. A writ of mandamus is a command that may be issued by this Court to an inferior court, public official, or agency to compel the performance of a duty to which the petitioner has established a clear legal right. n2 However, such a writ will not be issued unless the petitioner can establish that he has a clear right to the performance of the duty, that there has been arbitrary refusal or failure to act and that there is no other adequate remedy available. n3 Even when these requirements are met, it is within the Court's discretion whether the issuance of such a writ is justifiable. n4

----- Footnotes -----

n2 Clough v. State, Del. Supr., 686 A.2d 158, 159 (1996).

n3 Id. See In re Bordley's Pet. for Writ of Mandamus, Del. Supr., 545 A.2d 619, 620 (1988).

n4 Ingersoll v. Rollins Broadcasting of Del., Inc., Del. Supr., 272 A.2d 336, 338 (1970).

----- End Footnotes-----

4. Whether "good time" may be earned for participation in rehabilitation programs is governed by 11 Del. C. § 4381(c), n5 which provides that "good time" may be awarded for satisfactory participation in approved rehabilitation programs, as designated by the Commissioner. n6 "Good time" does not exist as a matter of constitutional right. n7 It is strictly governed by statute, n8 and while DOC has limited discretion in calculating good time credits and must follow the applicable statutes, 11 Del. C. § 4381 grants the Commissioner discretion to designate which rehabilitation programs will justify the awarding of such credits. n9

----- Footnotes -----

n5 See supra note 1.

n6 11 Del. C. § 4381(c)(1).

n7 Snyder v. Andrews, Del. Supr., 708 A.2d 237, 242 (1998).

n8 Nardini v. Willin, Del. Supr., 245 A.2d 164, 165 (1968).

n9 See Id. at 166.

----- End Footnotes-----

5. Since Petitioner has not established a clear legal right to good time credits for the programs which he is seeking credit and has failed to establish that those programs were designated for good time credits by the Commissioner, Petitioner's Writ of Mandamus is DENIED.

DOC records show that as of this date, petitioner has been awarded 47 days in meritorious credit time, and the award of those 47 days, combined with his statutory good time credits, renders his release date to be February 5, 2006. Petitioner's contention that he has not been awarded meritorious credit time is factually wrong. Since petitioner has not established a clear legal right to good time credits which he is not receiving, the petition seeking meritorious credit time is denied.

For the foregoing reasons, the petition seeking a writ of mandamus is denied.

IT IS SO ORDERED THIS 9th DAY OF MAY, 2005.

JUDGE

cc: Prothonotary's Office
Shawn D. Hopkins
Dave Vinson, SCI
Ophelia Waters, DAG
State v. Hopkins