STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: August 19, 2015)

JOSHUA FLYNN,	:	
Petitioner,	:	
	:	
v.	:	**C.A. No. KM-2014-1186**
	:	
	:	
ASHBEL T. WALL, II, DIRECTOR,	:	
DEPARTMENT OF CORRECTIONS,	:	
Respondent.	:	

DECISION

RUBINE, J. This matter is before the Court on Respondent, Ashbel T. Wall's[1] motion to dismiss the application for post-conviction relief of Applicant Joshua Flynn (Petitioner). The State moves pursuant to Rule 12(b)(6) of the Rhode Island Rules of Civil Procedure for an order dismissing Petitioner's Complaint for failure to state a claim and asserts *res judicata* grounds as well. For the reasons set forth herein, the State's motion to dismiss is converted to a Super. R. Civ. P. 56(b) motion for summary judgment. The State's motion is granted in part and denied in part. Jurisdiction is pursuant to G.L. 1956 § 10-9.1-6.[2]

[1] Although Ashbel T. Wall is the named Respondent in this case, the motion at issue was filed by the State of Rhode Island Attorney General (Respondent) acting on behalf of Mr. Wall.

[2] The State also moved to dismiss this petition pursuant to Rule 12(b)(1) of the Rhode Island Rules of Civil Procedure for lack of subject matter jurisdiction. This Court finds that it does have subject matter jurisdiction to hear Petitioner's claims by way of petition for post-conviction relief. "[P]ost-conviction relief is available to a defendant convicted of a crime who contends that his original conviction or sentence violated rights that the state or federal constitutions secured to him." Young v. State, 877 A.2d 625, 628 (R.I. 2005). Petitioner is essentially arguing that his sentence was lengthened in violation of the due process, equal protection, and cruel and unusual punishment provisions guaranteed by the Rhode Island and United States Constitutions. Petitioner has set forth arguments based on alleged violations of his right to due process under the Fourteenth Amendment to the United States and Rhode Island Constitutions; his right to

I

Facts and Travel

Petitioner has asked this Court to restore good time credits in each instance where the Rhode Island Department of Corrections (DOC) subjected him to discipline without first affording Petitioner the opportunity to present a defense, including but not limited to the presentment of witnesses. The Petitioner is currently serving a sentence at the Adult Correctional Institution (ACI), as imposed upon him subsequent to his conviction on April 24, 1996 after he pled *nolo contendere* to two counts of second degree robbery in Kent Superior Court (C.A. No. K2-1994-0446A). At that time, Petitioner received a thirty-year sentence, with eight years to serve at the ACI and the balance suspended with probation. That sentence was subsequently reduced by the Superior Court to an aggregate of twenty-two years, with thirty-four months to serve and the balance suspended with probation. Petitioner was released from the ACI in approximately May of 2002. However, in December 2002, Petitioner violated the terms of his probation and a Superior Court Justice sentenced him to serve the remainder of his sentence in the ACI. In addition to the violation, Petitioner was charged with one count of breaking and entering the dwelling of a person over age sixty in Kent Superior Court (C.A. No. K2-2005-0315A). Petitioner was sentenced to twenty years, with fifteen years to serve and the balance

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equal protection under the law pursuant to the Fourteenth Amendment to the United States Constitution and article 1, section 2 of the Rhode Island Constitution; and his right to be free from cruel and unusual punishment pursuant to the Eighth Amendment of the United States Constitution and article 1, section 8 of the Rhode Island Constitution. Moreover, our Supreme Court has explicitly stated that "'issues regarding the computation of good-time credit should [typically] be filed as an application for post-conviction relief,'" Morey v. Wall, 849 A.2d 621, 624 (R.I. 2004) (quoting Gomes v. Wall, 831 A.2d 817, 821-22 (R.I. 2003). Therefore, this Court has subject matter jurisdiction to consider the petition and accordingly has jurisdiction to review this motion based on Super. R. Civ. P. 12(b)(6).

suspended with probation. This sentence runs concurrent with the sentence imposed in K2-1994-0446A.

In 2002, Petitioner notified the DOC of alleged occurrences of misfeasance and malfeasance of DOC officers and other officials directed at Petitioner and allegedly in retaliation for Petitioner's involvement in an incident where a police officer was injured. Petitioner states that he complained that he was subjected to assaultive conduct and excessive force, disciplined upon false institutional charges, denied prompt medical treatment and arbitrarily denied certain privileges. In October 2011, Petitioner notified the DOC that he intended to challenge certain conditions of confinement at the High Security Center through the inmate grievance process and, if necessary, through the judicial process. In accordance with the DOC's protocol, Petitioner requested grievance forms with which he could initiate said process. The DOC allegedly refused to provide Petitioner with the appropriate forms, which are only available to inmates upon request. Petitioner then escalated his request through the chain of command at the High Security Center, and, ultimately, a deputy warden allegedly threatened to move Petitioner to a disfavored unit if he did not cease in his attempt to avail himself of the grievance process.

In November 2011, Petitioner filed a Complaint in Providence Superior Court against the Director of the Department of Corrections and several named and unnamed officials to seek redress for alleged tort claims and violations of his constitutional and civil rights. Petitioner's Complaint included numerous allegations of misconduct on the part of the DOC officials, both in general and on specific alleged dates and occasions between 2003 and 2006, and in 2011. Petitioner sought injunctive and declaratory relief as well as compensatory and punitive damages.

Petitioner alleges that shortly after he filed the November 2011 Complaint, DOC officials began to engage in a course of retaliatory conduct, including scrutiny and harassment which allegedly occurred far more frequently for him than for similarly classified inmates. The Petitioner alleges that since December of 2011, DOC officers have alleged that he committed ninety-two infractions of the disciplinary code. DOC officials sustained ninety-one of the allegations and allegedly have subjected Mr. Flynn to disciplinary sanctions in excess of 3200 days. By operation of section 42-56-24 of the Rhode Island General Laws, said discipline has resulted in the revocation of an equal number of days of good time credit. Petitioner alleges that in many instances the DOC summarily sustained the allegations against the Petitioner, and he was disciplined without first allowing him an opportunity to present witnesses to aid in his defense against the bare allegations of a DOC official. Petitioner, to no avail, appealed these disciplinary determinations through the highest administrative level at the DOC.

II

Standard of Review

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint about whether it fails to state a claim upon which relief can be granted." Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012). "Rule 12(b)(6) does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint." Hyatt v. Vill. House Convalescent Home, Inc., 880 A.2d 821, 823 (R.I. 2005). When ruling on a Super. R. Civ. P. 12(b)(6) motion, a court's review is confined to the four corners of the pleadings. See Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). If the movant cannot show beyond a reasonable that there is no conceivable facts that could be proven in support of the claim, the motion to dismiss must be denied, and the allegations in the complaint

must be accepted as true and viewed in the light most favorable to the non-moving party. However, if evidence is presented beyond the allegations set forth in the complaint, and "a trial justice considers evidence not incorporated in the final pleadings, a motion to dismiss under Rule 12(b)(6) is automatically transformed into one for summary judgment pursuant to Rule 56." W. Mass. Blasting Corp. v. Metro. & Cas. Ins. Co., 783 A.2d 398, 401 (R.I. 2001).[3] Moreover, our Supreme Court has stated that "the proper vehicle for disposing of an action barred by res judicata is the issuance of a summary judgment." Air-Lite Prods., Inc. v. Gilbane Bldg. Co., 115 R.I. 410, 423, 347 A.2d 623, 630 (1975).

Summary judgment is proper when "no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Super. R. Civ. P. 56(c)). When considering a motion for summary judgment, this Court must draw "'all reasonable inferences in the light most favorable to the nonmoving party.'" Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Fiorenzano v. Lima, 982 A.2d 585, 589 (R.I. 2009)). The burden lies with the non-moving party to prove that disputed issues of material fact exist to compel a denial of summary judgment. Senn v. MacDougall, 639 A.2d 494, 495 (R.I. 1994). Where it is concluded "'that no genuine issue of material fact exists and that the moving party is

[3] We note that the Court need not give the defendant explicit notice of a motion conversion in order to give them a reasonable opportunity to present evidence. Instead, when the moving party attaches evidence outside of the pleadings to its motion for judgment on the pleadings, the nonmovant is "squarely on notice that the court ha[s] the option of treating the motion as one for summary judgment." Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 83 (1st Cir. 1997). Here, the State included with its motion evidence of other lawsuits filed by Petitioner and clearly outside of the pleadings. Petitioner filed no objections to the motion on these grounds. Therefore, Petitioner was put on notice and had a reasonable opportunity to present evidence pertinent to a summary judgment motion in this case.

entitled to judgment as a matter of law,"' summary judgment shall enter. Malinou v. Miriam Hosp., 24 A.3d 497, 508 (R.I. 2011) (quoting Poulin v. Custom Craft, Inc., 996 A.2d 654, 658 (R.I. 2010)). However, "if the record evinces a genuine issue of material fact, summary judgment is improper. . . . " Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted). Furthermore, summary judgment is a "drastic remedy that should be cautiously applied." McPhillips v. Zayre Corp., 582 A.2d 747, 749 (R.I. 1990).

III

Analysis

In support of its motion, the State argues that the Petitioner's application for post-conviction relief is barred pursuant to the doctrine of *res judicata*. The State also argues that the Petitioner's due process claims must fail as Rhode Island does not consider good time credits to arise to the level of liberty or property rights for due process analysis.

A

Res Judicata

The State first argues that the Petitioner's claim is barred by the well-established doctrine of *res judicata.* See § 10–9.1–8; Ferrell v. Wall, 971 A.2d 615, 619 (R.I. 2009).

"The doctrine of res judicata operates as an absolute bar to relitigation of the same issues between the same parties when a final judgment has been rendered." Carillo v. Moran, 463 A.2d 178, 182 (R.I. 1983). For *res judicata* to apply, the movant must establish: (1) identity of parties, (2) identity of issues, (3) identity of claims for relief, and (4) finality of judgment. Bassett's Estate v. Stone, 458 A.2d 1078, 1080 (R.I. 1983). Moreover, our Supreme Court has held that § 10–9.1–8 "'means that a judgment on the merits in the first case not only is conclusive with regard to the issues that were actually determined but also precludes reconsideration of all other

issues that *might have been raised* in the prior proceeding.'" Ferrell, 971 A.2d at 620 (quoting Ramirez v. State, 933 A.2d 1110, 1112 (R.I. 2007)).

After reviewing the State's submissions in this case, this Court is not satisfied that the State has properly supported its motion under the theory of *res judicata*. The State cites to two prior cases filed by the Petitioner in which this Petitioner alleged similar constitutional claims against Respondent (and other individuals): PC-2011-6707 and PC-2013-1527.

The case associated with case number PC-2011-6707 is a civil rights action wherein Petitioner sought declaratory and injunctive relief as well as compensatory and punitive damages against Respondent and other defendants. The State, however, fails to point to any order or decision from the Superior Court relating to the disposition of this case. While it appears from the court docket that this case was dismissed, there is no evidence before this Court to indicate whether there was a final decision on the merits in this case. See Ferrell, 971 A.2d at 620.

In case number PC-2013-1527, Petitioner sought declaratory and injunctive relief against Respondent regarding Petitioner's inmate classification and confinement in segregation for more than a year. The State attached to its motion an Order entered in PC-2013-1527. However, although the Order clearly granted Respondent's Motion to Dismiss with respect to Petitioner's "request for a temporary restraining order and preliminary injunction," the Order does not state the grounds upon which the Motion was granted nor was any transcript of the proceedings filed with the Court. Therefore, this Court cannot determine whether there was a final decision on the merits on the identical issues raised in that case. See id. As the State has failed to provide this Court with sufficient evidence that a final judgment on the merits was reached in either of Petitioner's previous cases, the doctrine of *res judicata* does not apply and does not preclude the instant action at this time.

B

Due Process

The Petitioner argues that the DOC denied Petitioner his due process rights by revoking Petitioner's good time credits without first allowing him an opportunity to present witnesses to aid in his defense. The State replies that, in Rhode Island, there is no constitutional right to good time credits.

The United States Supreme Court has recognized that "[l]awful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a 'retraction justified by the considerations underlying our penal system.'" Wolff v. McDonnell, 418 U.S. 539, 555, 94 S. Ct. 2963, 2974, 41 L. Ed. 2d 935 (1974) (quoting Price v. Johnston, 334 U.S. 266, 285, 68 S. Ct. 1049, 1060, 92 L. Ed. 1356 (1948)). Nevertheless, "though his [or her] rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country." Wolff, 418 U.S. at 555-56. Still, "[p]rison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply. . . . there must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." Id. at 556.

The United States Supreme Court has also stated that the U.S. Constitution itself does not guarantee good time credits while in prison. Id. at 557. However, the Court also recognized that states can provide by statute a right to good time, which could constitute a liberty interest within the Fourteenth Amendment that entitles an inmate to the procedures required by the Due Process Clause before such a liberty interest can be denied. Id. at 557-58 ("We think a person's liberty is

equally protected, even when the liberty itself is a statutory creation of the State. . . . Since prisoners in Nebraska can only lose good-time credits if they are guilty of serious misconduct, the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed."). See also Sandin v. Conner, 515 U.S. 472, 483-84, 115 S. Ct. 2293, 2300, 132 L. Ed. 2d 418 (1995) ("Following Wolff, we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause.").

Here, Petitioner argues that as a result of the precedent articulated in Wolff, he was entitled to a hearing prior to the revocation of his good time credits by operation of § 42–56–24.[4]

[4] Section 42–56–24 reads as follows:

> "[T]ime [allowed] for good behavior . . . .
> "(b) The director, or his or her designee, shall keep a record of the conduct of each prisoner, and for each month that a prisoner who has been sentenced to imprisonment for six (6) months or more and not under sentence to imprisonment for life, appears by the record to have faithfully observed all the rules and requirements of the institutions and not to have been subjected to discipline, . . . there shall, **with the consent of the director of the department of corrections, or his or her designee, upon recommendation to him or her by the assistant director of institutions/operations,** be deducted from the term or terms of sentence of that prisoner the same number of days that there are years in the term of his or her sentence; provided, that when the sentence is for a longer term than ten (10) years, only ten (10) days shall be deducted for one month's good behavior; and provided, further, that in the case of sentences of at least six (6) months and less than one year, one day per month shall be deducted.
> "For the purposes of . . . computing the number of days to be deducted for good behavior, consecutive sentences shall be counted as a whole sentence.
> . . .
> "(d) For every day a prisoner shall be shut up or otherwise disciplined for bad conduct, **as determined by the assistant director, institutions/operations, subject to the authority of the director,** there shall be deducted one day from the time he or she shall have gained for good conduct.

Nonetheless, the Rhode Island Supreme Court has previously considered § 42-56-24 and found that it vests no constitutionally protected property right or liberty interest in good time credits while incarcerated. Barber v. Vose, 682 A.2d 908, 912 (R.I. 1996). "Our good-behavior or good-time sentence credit statute § 4[2]–56–24 is *discretionary* in its application. It is dependent upon an inmate's monthly compliance with and obedience to prison rules and regulations as well as the further affirmative discretionary action on the part of two different department of corrections officers." Id. (emphasis in original). Our Supreme Court held that because the DOC has the discretion[5] to grant or refuse to grant good-behavior credit to an inmate, the holding in Wolff does not apply in Rhode Island. Id. ("Wolff procedures are only required when the statute in question is mandatory or specifically limits the discretion of prison department authorities. Because the department of corrections officials designated in § 42–56–24 are vested with discretion in granting or refusing to grant good-behavior and institutional industries time credits, depending upon the inmate's monthly record of conduct, the predicate for Barber's invocation of the Fourteenth Amendment protection as construed and applied in Wolff is totally nonexistent.") (citing Meachum v. Fano, 427 U.S. 215, 96 S. Ct. 2532, 49 L. Ed.2d 451, reh'g

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> "(e) The assistant director, or his or her designee, subject to the authority of the director, shall have the power to restore lost good conduct time in whole or in part upon a showing by the prisoner of subsequent good behavior and disposition to reform.
> "(f) For each month that a prisoner who has been sentenced to imprisonment for more than one month and not under sentence to imprisonment for life who has faithfully engaged in institutional industries there shall, **with the consent of the director, upon the recommendations to him or her by the assistant director, institutions/operations,** be deducted from the term or terms of the prisoner an additional two (2) days a month." (Emphasis added).

[5] "At no time since 1872 has the statute ever provided for automatic allowance of good behavior credits or by so-called up-front allowance of good behavior sentence credit reduction. In fact, a contrary intention was clearly expressed in the 1872 version of the statute and in each and every legislative amendment to the statute enacted thereafter." Barber, 682 A.2d at 913.

denied 429 U.S. 873, 97 S. Ct. 191, 50 L. Ed.2d 155 (1976); Montanye v. Haymes, 427 U.S. 236, 96 S. Ct. 2543, 49 L. Ed.2d 466 (1976); Jackson v. Hogan, 388 Mass. 376, 446 N.E.2d 692 (1983)). "[T]here is no liberty interest created by our good time and industrial time credit statute since it is completely discretionary[.]" Leach v. Vose, 689 A.2d 393, 398 (R.I. 1997). "The Department can decide, within its discretion, whether to award good time and industrial time credits at all," and an inmate cannot claim a violation of his or her liberty interests when the Department decides to change the method of calculating such time. Id.

However, the Petitioner contends that his case is distinguishable from the Barber and Leach cases as the Rhode Island Supreme Court has not addressed the issue of whether revocation of earned good time credits must comport with minimal due process. The Petitioner argues that unlike the permissive statutory language that affords the DOC the plenary discretion to award good time, the DOC has no discretion in revoking good time credits.

Although our Supreme Court has not specifically addressed whether there was a liberty interest in good time credits once those good time credits were received, this Court finds persuasive authority in a previous decision of the Superior Court. When faced with the same question that this Court is faced with today, the Superior Court found that § 42-56-24(c) "vests the assistant director with the discretion to determine whether or not an inmate has engaged in bad behavior. As a result, the revocation of good-time credit does not implicate the due-process clause." Johnson v. State, No. KM 99-1007, 2002 WL 1803931, at *3 (R.I. Super. July 17, 2002) (McGuirl, J.). Although a prior decision of the Superior Court is not binding authority, it clearly is instructive and this Court agrees with the well-reasoned analysis by Justice McGuirl set forth in Johnson. See id.

As "[t]he plain statutory language is the best indicator of legislative intent[,]" this Court will look directly to the language of the statute. State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005) (citing Martone v. Johnston Sch. Comm., 824 A.2d 426, 431 (R.I.2003)). After examining the language of § 42–56–24, it is clear that there is no substantial difference in the language which grants the discretion to give good time from that which grants discretion to revoke it. For example, the statute addresses the ability to grant good time credits:

> "[F]or each month that a prisoner who has been sentenced to imprisonment . . . appears by the record to have faithfully observed all the rules and requirements of the institutions and not to have been subjected to discipline, . . . there shall, **with the consent of the director of the department of corrections, or his or her designee, upon recommendation to him or her by the assistant director of institutions/operations,** be deducted from the term or terms of sentence of that prisoner the same number of days that there are years in the term of his or her sentence. . ." Sec. 42–56–24(b) (emphases added).

The statute also addresses the ability to take away good time credits:

> "For every day a prisoner shall be shut up or otherwise disciplined for bad conduct, **as determined by the assistant director, institutions/operations, subject to the authority of the director,** there shall be deducted one day from the time he or she shall have gained for good conduct." Sec. 42–56–24(d) (emphasis added).

This Court finds that, in both instances, the statute affords discretion to the DOC. It is the DOC which determines whether an inmate is disciplined for bad conduct and will lose good time credits.[6] Because, like the ability to grant good time credits, the ability to revoke good time credits is also within the discretion of the DOC, this Court finds no reason to stray from the holdings in Leach and Barber.

[6] Notably, the United States Supreme Court has recognized that "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." Sandin, 515 U.S. at 485.

Accordingly, the Petitioner was not denied due process rights when his good time credits were revoked.[7] See Leach, 689 A.2d at 398 (holding, "there is no liberty interest created by our good time and industrial time credit statute since it is completely discretionary"); Barber, 682 A.2d at 914 (concluding, "so-called good time credit for good behavior while incarcerated is not a constitutional guarantee . . . but is instead an act of grace created by state legislation that may provide therein for the manner in which good time credits may be granted for compliance with, or revoked for violations of, prison rules and regulations").

[7] Moreover, this Court notes that the DOC does not abuse its discretion in disciplining inmates through arbitrary protocol. Instead, the DOC has set forth a detailed code in which its employees and officials must follow when disciplining an inmate. For example, the DOC has set out six mandatory steps afforded to every inmate subject to internal discipline: (1) initial booking report; (2) superior officer/designee review; (3) notice to the inmate; (4) hearing before a hearing officer; (5) administrative review by the warden/administrator of community confinement/designee; and (6) record. See Rhode Island Department of Corrections Policy and Procedure: Code of Inmate Discipline, No. 11.01-5 DOC, (Mar. 9, 2009), http://www.doc.ri.gov/documents/administration/policy/Added%20in%208-12/11.01-5%20Code%20of%20Inmate%20Discipline.pdf. While these procedures may fall short of the full panoply of procedural rights afforded a defendant in a criminal case, because the R.I. Supreme Court has found no protected liberty or property interests at stake in disciplinary proceedings, the DOC may exercise its discretion to revoke good time credits, without affording the inmate such a full panoply of procedures as might be due in a proceeding which clearly implicates liberty or property interests. See Barber, 682 A.2d at 912. The procedures required to properly carry out the DOC's disciplinary policy are thoroughly explained in the DOC's Code of Inmate Discipline, which is provided to every employee with contact or authority over inmates as well as the inmates. Id. The Code of Inmate Discipline also discusses which infractions will lead to a loss of good time. Id. Furthermore, every inmate is given an Inmate Handbook, which refers the inmates to the Code of Inmate Discipline and also discusses the loss of good time: "Every inmate in disciplinary confinement or otherwise disciplined for bad conduct will have one (1) day of good time deducted from any good time gained for good conduct for each day ordered as a sanction at the disciplinary hearing." See Rhode Island Department of Corrections: Inmate Handbook, at 10 http://www.doc.ri.gov/documents/Inmate%20Handbook%20507.pdf.

IV

Conclusion

For the foregoing reasons, The State's motion is granted in part and denied in part. The Court agrees with the State's position that Petitioner's claim of a due process violation should be dismissed in accordance with Super. R. Civ. P. 12(b)(6) and Super. R. Civ. P. 56. As there are no conceivable facts which would entitle the Petitioner to a more extensive due process hearing as it relates to the revocation of previously-awarded good time credits, Petitioner's other claims of equal protection and cruel and unusual punishment violations cannot be so dismissed based on the pleadings, and a hearing must be held to elicit facts in support of such claims.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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COURT: **Kent County Superior Court**

DATE DECISION FILED: **August 19, 2015**

JUSTICE/MAGISTRATE: **Rubine, J.**

ATTORNEYS:

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