

18-7518

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUL 13 2018

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Holt — PETITIONER
(Your Name)

vs.

J.A. Terris, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Holt #14325-045

(Your Name)

Federal Correctional Institution
P.O. box 1000

(Address)

Milan, Michigan. 48160

(City, State, Zip Code)

Prisoner no phone

(Phone Number)

QUESTION(S) PRESENTED

- I. Should the Supreme Court of the United States hear this case that presents a substantial issue of first impression in the Federal Judicial System that affects all Military prisoners serving a life sentence in the Federal Bureau of Prisons?
- II. Can Title 18 U.S.C. §4206(d) and 28 Code Of Federal Regulations (CFR) Chapter 1 §2.61 be interpreted to read that Congress intended that a Military prisoner serving a life sentence in the Federal Bureau Of Prisons (BOP) could have his/her two-thirds presumptive release reduced by the prisoners Military Abatement Good Time earnings awarded to the prisoner prior to transfer to the BOP ?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Due Process Clause.

Fourteenth Amendment Equal Protection Clause.

Title 18 U.S.C. §4206(d)

Title 18 U.S.C. §4161

Title 10 U.S.C. §858(a)

STATEMENT OF THE CASE

The Petitioner Kevin Holt is a Military priosner confined in the Federal Bureau of Prisons serving a life sentence for conspiracy to commit larceny, larceny, and premedetated murder. See United States v. Holt, 52 M.J. 173, 174 (C.C.F. 1999).

In 2002, Holt was transered from a military prison at Fort Leavenworth Kansas, to the custody of the Bureau of Prisons (BOP) pursuant to 10 U.S.C. §858(a) which provides for incarceration of a military prisoner in a federal prison. While confined at the Military Prison in Leavenworth Kansas, Holt earned 993 days of "military abatement good-time credit". (See Appendix F, Exhibit A).

Although federal parole has been abolished by the Sentencing Reform Act, military prisoners are still eligable for parole. In 2011, the United States Parole Commission directed the BOP to "calculate a two-thirds date" on Holts sentence. (See Appendix F, Exhibit A(2)). The BOP's two-third date calculation gives Holt a presumptive release date of May 25, 2022. Holt requested the BOP to credit him with the 993 days "military abatement good-time credits that would reduce his two thirds presumptive release to May, 2019.

The BOP refused to credit Holt with the 993 "military abatement good-time credits" toward his two-third presumptive release date. In 2016, Holt filed a Habeas Corpus Petition under §2241 naming J.A. Terris, Warden FCI Milan as the Respondant. Holt argued that his military abatement good time credits could be applied to his presumptive two-thirds release date. Holts argument relied on the language in 28 C.F.R §260(f) which indicates that a "prisoner's

presumptive release date can be further reduced by extra earned good time credits pursuant to 18 U.S.C. §4161. A Magistrate Judge recommended that the district court deny Holt's petition. Over Holt's objections the district court adopted the Magistrate's report and recommendation and denied Holt's habeas petition. (See Appendix E).

Holt filed a timely Notice Of Appeal and presented his case and arguments to the Sixth Circuit Court of Appeals. On May 22, 2018, the Sixth Circuit Affirmed the district court's Judgment denying Holt's Habeas Corpus Petition. (Appendix A). Holt now petitions the Supreme Court to exercise its appellate jurisdiction to hear this case because it presents a matter of first impression in the Federal Judiciary System that presents a matter of importance to all Military Prisoners serving a life sentence in the Bureau Of Prisons.

REASONS FOR GRANTING THE PETITION

The petitioner Kevin Holt presents a substantial issue of first impression in the Federal Judicial System that affects all Military prisoners serving a life sentence in the Federal Bureau Of Prisons, that needs to be decided by the Supreme Court Of The United States.

The District Court for the Eastern District of Michigan, Southern Division, the Sixth Circuit Court of Appeals, and the Petitioner can find no legal authority "explicitly stating that Military Abatement Good Time (MAGT) (as opposed to other types of good time) cannot advance the date a prisoner is likely to be released on parole (either as a general matter or in the specific case where a prisoner is serving a life sentence). (See APPENDIX E, Order and Opinion of District Court, page 1). Because there is a number of Military prisoners serving life sentences in the Bureau Of Prisons (BOP) that have earned MAGT prior to transfer to the BOP that cannot get the benefit of their MAGT because the BOP refuses to apply their MAGT toward the computation of their "presumptive, two thirds, Mandatory Parole date", that would reduce that date based on the amount of MAGT earned by the Military prisoner, the Supreme Court needs to decide the issue by interpreting the Statutes and Regulation that govern the issue. To date there is no "process" in place that governs the BOP's computation of a Military prisoner's MAGT and the BOP is unconstitutionally denying Military prisoners the benefits of their MAGT toward the computation of their

"presumptive, two thirds, Mandatory Parole release date", in violation of their Fifth Amendment due process clause and Fourteenth Amendment Equal Protection Clause.

The present Statutes and Regulations governing good time credits do not address or provide any consideration or guidance concerning a Military prisoners MAGT once he/she is transfered to the BOP to serve his sentence. But "Military prisoners currently in federal prisons are subject to the parole scheme that governed all federal prisoners prior to the Sentencing Reform Act". Title 10 U.S.C. §858(a), also see *Romey v. Vanyur*, 9 F. Supp. 2d 565, 571-72 (E.D.N.C. 1998).

After Holt arrived in the BOP the BOP computed his life sentence pursuant to 18 U.S.C. §4206(d) and gave Holt a 30-year "presumptive, two third, Mandatory Parole date". Section 4206(d) provides:

(d) Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier". (18 U.S.C. §4206(d)).

When Congress enacted 18 U.S.C. §4206(d) it was Congresses intent that a federal prisoner serving a life term who had not earlier been released under any provision of law, "shall" be released on parole after serving "thirty years". Congress used the word "shall" which means "mandatory". Holt not having been released earlier has been given a thirty (30) year mandatory parole release date as required by Statutory Law. (18 U.S.C. §4206(d)).

When Holt reached his ten (10) parole eligible date the United States Parole Commission denied holt a parole and continued him to the experation of his life sentence. Pursuant to 28 CFR Chapter 1. §261(f) a federal prisoner who is originally continued to experation of sentence can have thier "presumptive release date" reduced by extra good time. 28 CFR Chapter 1 §261(f) provides:

(f) For cases originally continued to experation, the statutory good time date (calculated under 18 U.S.C. 4161) will be used for computing the maximum reduction possible and as the base from which the reduction is to be subtracted for prisoners serving sentences of less than five years. For prisoners sentences of five or more, the two thirds date (calculated pursuant 18 U.S.C. §4206(d)) will be used for these purposes. If the prisoner's presumptive release date has been further reduced by extra good time (18 U.S.C. 4161) and such reductions equals or exceeds the reduction applicable for superior program achievements, the Commission will not give additional reduction for superior program achievements.

The plain reading of 28 CFR Chapter 1 §261(f) clearly show it was Congresses intent that when a federal prisoner reached his/her original parole eligibility, and was denied parole, and continued to experation of their sentence calculated pursuant to 18 U.S.C. §4206(d), which would be a 30 year presumptive mandatory parole release date in Holt's case, that the presumptive release date can be reduced by extra good time (18 U.S.C. 4161). The relevant wording of §261(f) that supports Holt's position is the wording **"If the prisoner's presumptive release date has been further reduced by extra good time (18 U.S.C. 4161)"**. which shows that Congress intended that a prisoners who was "originally" denied parole and continued to experation of sentence and given a presumptive release date under §4206(d), could have

his/her presumptive release date "reduced by extra good time". Here Holt's MAGT qualifies as extra good time pursuant to 18 U.S.C. §4161, and that MAGT can be used to reduce Holt's presumptive mandatory release date calculated pursuant to 18 U.S.C. §4206(d).

Holt prays the Supreme Court will hear and decide the issue presented herein and hold that a Military prisoner's MAGT can be computed by the BOP to reduce his "two third, presumptive mandatory parole release date".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Kevin Holt, pro se

Date: 13 July 2018