

No. 19-6933

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Elmuiz Abdu --PETITIONER

Supreme Court, U.S.
FILED
NOV 14 2019
OFFICE OF THE CLERK

Vs.

Harold W. Clarke --RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

In The United States Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Elmuiz Abdu
(Your Name)

Deerfield Correctional Center

21360 Deerfield Drive
(Address)

Capron, Virginia 23829
(City, State, Zip Code)

(Phone Number)

TABLE OF CONTENTS

| | |
|---|---|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... | 3 |
| STATEMENT OF THE CASE..... | 4 |
| REASONS FOR GRANTING THE WRIT..... | 5 |
| CONCLUSION..... | 9 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | In The Circuit Court of Fairfax County |
| APPENDIX B | The Supreme Court of Virginia |
| APPENDIX C | In The United States District Court |
| APPENDIX D | In The United States Court of Appeals |
| APPENDIX E | |
| APPENDIX F | |
| APPENDIX G | |

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|-------------|
| Bruton v. Commonwealth, 63 Va. App. 210, 755 S.E.2d 485, 488 (Va. App. 2014) | 6 |
| Commonwealth v. Carter, 93 Va. Cir. 129 (2016) | 5,8 |
| United States v. Banks, 776 F.3d 87, 90 (2d Cir. 2015) | 8 |
| United States v. Gomez-Leon, 545 F.3d 777, 784-85 (9th Cir. 2008) | 8 |
| United States v. Williams, 630 F.3d 44, 51 (1st Cir. 2010) | 8 |

STATUTES AND RULES

| | |
|-----------------|-------|
| 28 U.S.C. §2254 | 5 |
| §52.1-187 | 5,6,8 |
| §52-208 | 5,6 |

OTHER

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:

QUESTION(S) PRESENTED

Base upon the case laws, rules, and the authority provided by the Genral Assermbly and the Attorney General, petitioner alleged the his jail good time credit and the ESC Level has been calculated incorrectly. Under the following argument below;

See 1972-1973 Op. Va. Att'y Gen. 313. "There is no question that a person convicted is entitled to credit for time spent awaiting trial... [T]he legislature has made no distinction as to the location of the jail in which the individual is confined..."

See 1995 Va. AG LEXIS 67: "A prior opinion of the Attorney General concludes that it was the intention of the General Assermbly in passing the predecessor to § 53.1-187, "that an inmate be given credit for all the time spent in jail awaiting trial regardless of the jurisdiction so long as there is no duplication."

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.

OPIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals 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.

The opinion of the United States district court appearing at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated of 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 B to the petition and is

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

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

☐ reported at _____; or,
☐ has been designated of 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 _____.

☐ 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 August 26, 2019 (date) on Nov. 20, 2019 (date) Nov. 20, 2019 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 March 21, 2017.
A copy of that decision appears at Appendix B. MAR 22, 2017

☐ 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

Due Process Right

4,8

Fourteenth Amendment Right

4,8

STATEMENT OF THE CASE

On June 3, 2000, Elmuiz Abdu, pro se petitioner was arrested on the following charges: (a) Homicide, and (b) Homicide. Whereas, on May 3, 2001, the Fairfax County Circuit Court Judge sentenced the petitioner to the following imposed sentence after he had entered a plea of guilty. On the case (a) Homicide, petitioner was sentence to 31 years imprisonment and on (b) Homicide, petitioner was sentence to 2 years, it was suspended for total sentence of 31 years imprisonment. There was no direct appeal filed on petitioner's behalf by his defense attorney in this case.

It was suspended 14

REASON FOR GRANTING THE PETITION

The petitioner Elmuzi Abdu, a Virginia inmate proceeding pro se, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Petitioner allege that, the Respondent violated his Fourteenth Amendment Right to due process resulting from an alleged improper calculation of his good conduct credit for time which he served in the Fairfax County Adult Detention Center, 439 days between June 4, 2000 until August 17, 2001.

Petitioner would indicate that, he was arrested on June 3, 2000 on the charges: (a) Homicide, and (b) Homicide. On May 3, 2001, the Fairfax County Circuit Court Judge sentenced petitioner to imposed sentence after a plea of guilty was entered. On (a) Homicide - 31 years and on (b) Homicide - 2 years with the 2 years suspended, giving the petitioner a total sentence of 31 years imprisonment. Since petitioner entered a plea of guilty, there was no direct appeal filed on petitioner behalf by his defense attorney.

After serving 439 days in the Fairfax County Adult Detention Center, on August 17, 2001, the petitioner became a responsible Virginia Department of Corrections state inmate.

THE FACTS RELATING TO THE ISSUE OF JAIL CREDIT

Based upon the following evidence and facts in this case. The law has been written to establish by the United States Constitution and by the General Assembly in passing §53-208. Any discussion of the legal issues presented by the instant case must begin with Virginia Code §53.1-187, which reads in pertinent part as follows: "Any person who is sentenced to a term of confinement in a Correctional Facility shall have deducted from any such term all time actually spent by the person... in a state or local correctional facility awaiting trial..." See Commonwealth v. Carter, 93 Va. Cir. 129 (2016).

Petitioner in the present case would state as facts that, he was arrested on June 3, 2000 and that he served 439 days in Fairfax

County Adult Detention Center. The Fairfax County Circuit Court Judge imposed a total sentence of 31 years. Therefore, petitioner was arrested on June 3, 2000 and received 31 years sentence. Without receiving any good time credit applied to petitioner's release date from (June 3, 2000 plus 31 years sentence being served). If petitioner was serving 31 years day for day, it would place petitioner release date at June 3, 2031. If petitioner served 439 days in the Fairfax County jail, all that time (439 days) actually spent by the petitioner shall be credit to his jail credit.

Petitioner would provide a few ORGANIZATION letters that has indicated how good time credit should have been calculated by the Virginia Department of Corrections. Petitioner would start with Virginia CURE letter first as his Exhibit "A" attached.

Petitioner has served in the Fairfax County Adult Detention Center while awaiting for trial (439 days) jail credit. (365 days multiple by 31 years is 11,315 days). If petitioner were given credit for the 439 days subtracted from 11,315 days is 10,876 days. So from June 3, 2031 subtracted 439 days would give petitioner's good time jail credit days at March 22, 2031. This time did not include the rate of 2.25 days for every 30 days served from June 3, 2000 to August 17, 2001. See petitioner Exhibit "B" attached of petitioner's letter he received dated January 28, 2016 from Court & Legal Services.

Which March 22, 2031 date adding the 439 days good time jail credit, the 2.25 days earned sentence of 439 days is an additional 195 days credit for every 30 days served. From March 22, 2031, subtracted 195 days would be September 9, 2030. This is without the 4.5 days credit. See petitioner's Exhibit "A" attached from Virginia CURE.

Based upon the language has been interpreted on several occasion in both appellate decision and opinion of the Attorney General: "A prior opinion of the Attorney General concludes that it was the intention of the General Assembly in passing §53-208, the predecessor to §53.1-187, "that an inmate be given credit for all time spent in jail awaiting trial regardless of the jurisdiction so long as there is no duplication.""

See Bruton v. Commonwealth, 63 Va. App. 210, 755 S.E.2d 485, 488 (Va. App. 2014): "[A]ppellant's right to receive a credit for the time he served while awaiting trial is not speculative. Nor is it discretionary."

In the Respondent's Motion to Dismiss in the state court habeas petition on page 2, section 10 and Ms. Brown's Affidavit on page 2, section 9, line 5, which states: "Prior to an offender's receipt into the VDOC, he may earn up to 2.25 days of earned sentence credits for every 30 days served." This was without the the 4.5 days VDOC good time credit.

THE FOLLOWING FACTS RELATED TO
THE ISSUE OF VDOC CLASS LEVEL GOOD TIME CREDIT
EARNED SENTENCE CREDITS UNDER THE ESC SYSTEM

When petitioner became a state responsible offender on August 17, 2001, he began earning sentence credit in Level 2, at a rate of 3 days of earned sentence credits for every 30 days served. Brown's Aff. ¶ 11. On August 17, 2003, petitioner was assigned to earning Level 1 and began earning 4.5 days of earned sentence credits for every 30 days served. Brown's Aff. ¶ 11.

Now what has not been disputed as facts is the 4.5 days per every 30 days served. Because 85% of 31 years sentence is a total of 25 years and 10 months under the 4.5 days for every 30 days served, after the calculation of petitioner's jail time credit. Therefore, if the petitioner's release date with the jail good time (439 days) under 2.25 days are September 9, 2031. Petitioner's release date with 4.5 days would come to petitioner's release date being January 20, 2026, or if his release date came under the completed 439 days jail good time credit, it would be February 20, 2031, with the 85% under 4.5 days would be April 18, 2025. See petitioner's Exhibit "C" attached of organization letter.

Petitioner's criminal history after determining the "total offense level," the judge determines the defendant's criminal history category. Prior sentences generally increase a defendant's criminal history score. Assignment of points is based on the judgment entered, not the length

of time actually served. See *United States v. Williams*, 630 F.3d 44, 51 (1st Cir. 2010)(defendant's criminal history increased by 2 points because points were based off sentence imposed after probation was revoked); *United States v. Banks*, 776 F.3d 87, 90 (2d Cir. 2015) (defendant's criminal history increased by 6 points by relying on sentences resulting from Alford pleas); *United States v. Gomez-Leon*, 545 F.3d 777, 784-85 (9th Cir. 2008)(defendant's criminal history improperly increased by 3 points because 365-day jail term for probation violation was replacement of 127-day jail term, not addition).

Based upon petitioner's argument and the fact from the two (2) organizations that has been provided as exhibits. It has been establish that, the respondent has not been truthful with their calculation of petitioner's good time credit. Petitioner had not received and disciplinary misconduct charge during his incarceration. Nor was he eviolation of any of VDOC policy or rules. Petitioner should not have lose any good time credit or sentence good time credit based on the jail credit or ESC level good time credit. If petitioner was arrested on June 3, 2000 and received 31 year sentence. He served a total of 439 days in jail, and earned 4.5 days for every 30 days served in ESC level I. His release date should have been before the projected good time release date on June 21, 2027. Brown's Aff. ¶ 12.

Despite this, "[l]iberty interested protected by the Fourteenth Amendment may raise from two sources - the Due Process Clause itself and the law of the States." *Id.* at 466. A state may "create a liberty interest protected by the Due Process Clause through its enactments of certain statutory and regulatory measures." *Id.* at 470.

Petitioner had alleged by demonstrating why he was not given all of his good time credit by introducing the present case, *Commonwealth v. Carter*, 93 Va. Cir. 129 (April 4, 2016). Any discussion of the legal issues presented by the instant case must begin with the Virginia Code § 53.1-187, which reads in pertient part as follows: "Any person who is sentenced to a term of confinement in a Correctional facility shall have deducted from any such term all time actually spent by the person... in a state or local Correctional facility awaiting trial..."

CONCLUSION

The petition for a writ of certiorari should be granted. For the foregoing reasons your petitioner respectfully prays that his writ should be reversed.

Respectfully submitted,

Date:

11-7-2019