

ORIGINAL

Supreme Court, U.S.

FILED

AUG 18 2020

OFFICE OF THE CLERK

NO. 20-5633

IN THE
SUPREME COURT OF THE UNITED STATES

Mark A. Thacker - Petitioner;

v.

State of Indiana - Respondent;

PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioner:

Mark A. Thacker #974152
Plaintiff-Thacker, *pro se*
Pendleton Correctional Facility
4490 W. Reformatory Road
Pendleton, IN 46064-9001

RECEIVED

AUG 26 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

Whether Petitioner, Mark A. Thacker, has suffer a miscarriage of justice and has been denied the equal protection and due process of laws as guaranteed in the Fourteenth Amendment, Sec. 1, when the Indiana courts erred in denying motion to correct the erroneous sentence imposed in this cause pursuant to *Indiana Code* 35-38-1-15 when the trial court failed to grant 469 days earned goodtime credit for jail time credit while waiting for trial awarded to every other prisoner in Indiana under *Indiana Code* 35-50-6-3(b) and delayed notifying him of denials in the trial court, Indiana Court of Appeals and then the Indiana Supreme Court?

equal protection of the laws

when he was denied in due process of law

this is in Indiana Code

various ways jail time credit

in Indiana Code 35-50-6-3(b)

whether he was denied in due process of law

equal protection of the laws

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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:

1. or in the

2. not appear

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

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**: N/A

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is- *not reported*

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 is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is- *not reported*

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 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at **Appendix C** to the petition and is- *not reported*

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

The opinion of the Indiana Court of Appeals appears at **Appendix B** to the petition and is- *not reported*

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

JURISDICTION

For cases from **federal courts**: N/A

The date on which the United States court of appeals decided my case was _____.
A copy of that decision appears at Appendix ____.

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: _____, 20____, 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 _____, 20____, on _____, 20____, in Application No. ___, and a copy of the order granting said extension appears at Appendix ____.

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 **July 31, 2020**

A copy of that decision appears at **Appendix C**. Rehearing is not permitted to the Indiana Supreme Court in Indiana.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied on the following date: _____, 20____, 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 _____, 20____, on _____, 20____, in Application No. ___, and a copy of the order granting said extension appears at Appendix ____.

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

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. On the 17 day of June, 1997, the Trial Court sentenced Thacker for the following offense(s). (f) Murder, Conspiracy to commit Burglary, a Class B felony; and Burglary, a Class B felony. Thacker received an executed term of one-hundred and seventy-five (175) years and the Court ordered Thacker committed to the Department of Correction. Thacker was given 469 days of credit for Jail time served and not Good time credit according to Indiana Code 35-50-6-3(b) which states that A person assigned to Class I earns (1) day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing. Thacker's Abstract of Judgment shows that Thacker was only given credit for jail time served and not good time credit as allowed under Indiana Code 35-50-6-3(b).

2. On November 13, 2018 Thacker filed a Motion to Correct Erroneous Sentence for goodtime credit not awarded during sentencing.

3. On April 25, 2019 Thacker after not hearing from the court, he wrote the Court Clerk to inquire whether his motion had been received and filed for a ruling being mailed on November 13, 2018, and he received a Motion back with a stamp on the upper corner of the motion filed stating "The Motion to Correct Erroneous Sentence filed November 13, 2018 was denied." (Appendix A).

4. Thacker never received an order stating his motion had been denied and did not learn it was until April 29, 2019 after receiving an answer to his letter.

5. Thacker filed a letter on May 9, 2019 and May 16, 2019 requesting again an actual Order and a copy of his Abstract of Judgment and never heard anything.

6. Thacker filed a Motion to Compel the Clerk to provide him with an "actual Order" on July 9, 2019. On July 11, 2019 this Court denied this motion and sent his motion back again

with the same thing as sent to him the first time stating, "As indicated previously the DENIED stamp and text is the Court's order on the Motion to Correct Erroneous Sentence." (Appendix A)

7. Thacker after not being served a copy of the order denying his motion and having diligently seeking to obtain an actual order knowing the Court of Appeals requires one, missed his thirty (30) day deadline to file his Notice of Appeal.

8. Thacker filed a Motion for Belated Notice of Appeal on August 2, 2019 that was denied August 8, 2019 by the trial court.

9. Thacker stated that any failure to file a timely notice of appeal was not due to his fault because the Court Clerk failed to first notify him at all his motion was denied and then failed to serve him the order denying his motion.

10. On February 21, 2020 the Indiana Court of Appeals affirmed the trial court's denial of Thacker's request for a belated appeal and good time credit.

11. On May 22, 2020 Thacker tendered his Transfer to the Indiana Supreme Court for filing and On June 17, 2020 the Clerk of the Indiana Supreme Court issued a Notice of Defect stating Petitioner's Petition to Transfer lacks a Table of Authorities, even though nowhere in App. R. 57G did its state his petition required a Table of Authorities.

12. On June 23, 2020 Thacker filed a Motion to Order Clerk to File Petition to Transfer and the Indiana Supreme Court ruled he was correct that there was no defect, however, his Petition to transfer was now untimely and denied his request for transfer on July 31, 2020.

13. Thacker now appeals to the United States Supreme Court to correct this manifest injustice and denial of his right to due process and equal protection as guaranteed under the Fourteenth Amendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

Thacker's right to due process and equal protection have been violated after addressing his complaint to the Indiana Department of Correction and received no reply prior to exhausting his remedies in the trial court, court of appeals and the Indiana Supreme Court as stated above. Thacker maintains while a prisoner loses some civil rights, nevertheless as stated by Mr. Justice Blackmun in *Jackson v Bishop*, 404 F.2d 571, 576, (CA8 1968) "he continues to be protected by the due process and equal protection clauses which follow him through the prison doors."

Indiana failed to award Thacker a protection which it has provided to similarly situated defendants over the years and which, so far as now foreseeable, Indiana will continue to provide to all Indiana defendants in the future violating his equal protection rights under the Fourteenth Amendment to the United States Constitution. This failure would be cast in a different light if the Indiana Legislature had repealed its law or if its Supreme Court had altered its interpretation and set out a general rule abrogating the right to receive good time credit for days spent waiting for trial. But without any change in the law the Equal Protection Clause of the Fourteenth Amendment forbids such an invidious picking out of one individual to bear legal burdens that are not imposed upon others similarly situated. See: *Beck v. Washington*, 369 U.S. 541, 8 L. Ed. 2d 198, 82 S. Ct. 955, reh. den 370 U.S. 965, 8 L. Ed. 2d 834, 82 S. Ct. 1575 (1962) (Mr. Justice Black, with whom The Chief Justice concurs, dissenting made clear in his dissent, the State singled out petitioner for special treatment by denying him the procedural safeguards the law afforded to others violates equal protection). In Indiana the Courts have consistently granted the good time credit requested by Thacker prior to his case and after it in *Garrett v. State*, 411 N.E.2d 692; 1980 Ind. App. LEXIS 1733 (Ind. Ct. App. 1980); *Bates v. State*, 426 N.E.2d 404; 1981 Ind. LEXIS 866 (Ind. 1981); *Crow v. State*, 797 N.E.2d 319, 322 (Ind. Ct. App. 2003) and

Maciaszek v. State, 75 N.E.3d 1089; 2017 Ind. App. LEXIS 154 (Ind. Ct. App. 2017) just to name a few cases proving Thacker has been singled out denying the same good time credit awarded to all others in Indiana.

Thacker followed the procedures established in Indiana to receive the good time credit he is entitled to only to be hindered and denied at every step of the process. In Indiana a motion to correct erroneous sentence may be used to correct those errors where the sentence is erroneous on its face. *Funk v. State*, 714 N.E.2d 746, 748-49 (Ind. Ct. App. 1999), *trans. denied*. A trial court may correct an erroneous sentence when a sentence is facially defective. *Mitchell v. State*, 726 N.E.2d 1228, 1243 (Ind. 2000); *Ind. Code 35-38-1-15*. A sentence is facially defective if it violates express statutory authority at the time it is imposed. *Mitchell*, 726 N.E.2d at 1243. A trial court's ruling on a motion to correct erroneous sentence is subject to appeal by normal appellate procedures. *Id.* On appeal, the court defers to the trial court's factual findings, but we review the trial court's legal conclusions *de novo*. *Id.* Thacker's Motion to Correct Erroneous Sentence followed the above procedures perfectly citing *Crow v. State*, 797 N.E.2d 319, 322 (Ind. Ct. App. 2003) to the trial court, Court of Appeals and Indiana Supreme Court as follows:

[Indiana Code Section] 35-50-6-4(a) provides: "A person imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I." Furthermore, [Indiana Code Section] 35-50-6-3(a) provides: "A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing." Because pre-sentence jail time credit is a matter of statutory right, a trial court generally {797, N.E.2d 322} does not have discretion in awarding or denying such credit. *Id.* (citation omitted).

Thacker further cited the Indiana Supreme Court further noted that in *Purcell v. State*, 721 N.E.2d 220, 223 (Ind. 1999), that "credit time" for purposes of Indiana Code Section 35-50-6 means "good time credit" not "credit for time served." *Id.* at 1195, n.2.

Again, Thacker brought to each Court in *Crow v. State*, 797 N.E.2d 319, 322 (Ind. Ct. App. 2003) that Indiana Code Section 35-50-6-3 governs credit time earned as a result of good behavior. Furthermore, the Indiana Courts has agreed that Indiana Code Section 35-38-3-2(b)(4) requires the court to include in its judgment the amount of credit time earned for time spent in confinement before sentencing. Although some courts have grappled at every level with the application of the credit time statutes, the ruling in *Crow v. State, Id.*, made it quite clear that the trial court do possess the authority to grant good time credit.

The Indiana Court of Appeals had concluded that because the sentencing court did not in *Crow* grant him good time credit along with credit for jail time served that it did indeed impose an erroneous sentence and sent the case back to the sentencing court for correction, yet every Indiana Court has not only denied Thacker his good time credit. The Indiana Courts have violated Thacker's right to due process hindering his filings by not notifying him of rulings in a timely manner, issuing invalid defect notices, and then denying him for being untimely and his right to equal protection under the Fourteenth Amendment to the United States Constitution not giving him the very thing it gives to all other prisoners in Indiana.

CONCLUSION

The petition for a writ of certiorari should be granted this Court grant him the same relief found in Crow and other cases by granting him Class 1 good time credit earned while in jail awaiting sentencing as allowed under Indiana Code Section 35-50-6-3(a) that Indiana has denied him correcting the denial of his right to due process and equal protection, and for all other relief deemed fair under law.

Executed on: August 17, 2020,

Respectfully submitted,

Mark A. Thacker

Mark A. Thacker
Petitioner / *pro se*