

APPENDIX A.

ALD-300

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2339

JOHN J. POWERS,
Appellant

v.

WARDEN ALLENWOOD USP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(M.D. Pa. Civ. No. 4:20-cv-00138)
District Judge: Honorable Matthew W. Brann

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 10, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

(Opinion filed: October 5, 2020)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Federal prisoner John Powers appeals pro se from the District Court's order denying his habeas petition filed pursuant to 28 U.S.C. § 2241. For the reasons that follow, we will summarily affirm that order.

I.

A federal prisoner who is serving a prison term of more than one year (but not life in prison) may, in a given year, earn a credit of up to 54 days for good-conduct time ("GCT"), so long as the Bureau of Prisons ("BOP") determines that he or she "displayed exemplary compliance with institutional disciplinary regulations" during that year. 18 U.S.C. § 3624(b)(1). If the BOP instead "determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit [for that year] . . . or shall receive such lesser credit [for that year] as the [BOP] determines to be appropriate." *Id.* "Until recently, although [§ 3624(b)(1)] provided that prisoners could earn 'up to 54 days' each year for exemplary compliance, the BOP used a calculation that allowed a maximum of only 47 days." *Bottinelli v. Salazar*, 929 F.3d 1196, 1197 (9th Cir. 2019).¹ However, the First Step Act of 2018 ("the FSA") amended § 3624(b) "to require the BOP to permit up to 54 days per year." *Bottinelli*, 929 F.3d at 1197 (citing the FSA). This amendment applies retroactively to offenses committed on or after November 1, 1987. *See id.* at 1198 (quoting the FSA). With these points in mind, we turn to Powers's case.

¹ The Supreme Court upheld that 47-day calculation in *Barber v. Thomas*, 560 U.S. 474, 476 (2010).

Powers has been a federal prisoner since 1989. Before the FSA was enacted, it appears that the BOP awarded him 47 days of GTC for some years and, in other years, awarded him either fewer days of GTC or no GTC at all due to various prison disciplinary infractions. After the FSA's enactment, the BOP recalculated his GTC total using the 54-days-per-year maximum. Based on that recalculation, the BOP determined that, as of July 2019, he had earned 1006 days of GTC (out of a possible 1620 days), and that, during the remainder of his prison sentence, he could earn up to an additional 132 days of GTC.

Powers objected to the BOP's recalculation. After his attempts to obtain relief from the BOP were unsuccessful, he filed a pro se habeas petition in the United States District Court for the Middle District of Pennsylvania pursuant to § 2241.² “The crux of [Powers's habeas claim] is that after the First Step Act was implemented, he should have been awarded the full 54 days [of GTC for *each and every year of imprisonment*],” and “that his disallowed [GCT] should have been restored after the recalculation.” (Dist. Ct. Op. entered June 17, 2020, at 3 [hereinafter Dist. Ct. Op.].) In other words, Powers's position was that, in light of the FSA's enactment, the BOP should have awarded him 1620 days of GTC, not 1006 days.

² That court was the proper venue for Powers's habeas petition. See Rumsfeld v. Padilla, 542 U.S. 426, 442-43 (2004) (indicating that a § 2241 petition should be filed in the district of confinement).

The Government opposed Powers's habeas petition, arguing that the BOP had properly calculated his amount of GTC. In June 2020, the District Court denied Powers's habeas petition on the merits. This timely appeal followed.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. §§ 1291 and 2253(a).³ We “review[] a district court’s denial of federal habeas relief *de novo* but review[] its factual findings for clear error.” Denny v. Schultz, 708 F.3d 140, 143 (3d Cir. 2013).

We find no error in the District Court’s denial of Powers’s habeas petition. “In essence, [Powers] believes that the First Step Act should provide him with a disciplinary clean slate.” (Dist. Ct. Op. 3.) But he has provided no authority to support this position, and neither the District Court nor we have found any such authority. As the District Court correctly observed, the FSA did not alter the language in § 3624(b)(1) that gives the BOP the authority to award either no GTC or less than the full amount of GTC in a given year if the BOP determines that the prisoner did not satisfactorily comply with the BOP’s disciplinary regulations during that year. The BOP’s exercise of that authority in Powers’s case does not run afoul of the FSA, and we see no potentially meritorious argument that, notwithstanding his history of prison disciplinary infractions, the BOP was required to award him the maximum amount of GTC for each and every year that he has been incarcerated.

³ Powers does not need a certificate of appealability to proceed with this appeal. See United States v. Cepero, 224 F.3d 256, 264-65 (3d Cir. 2000) (en banc), abrogated on other grounds by Gonzalez v. Thaler, 565 U.S. 134 (2012).

We have considered the various arguments presented by Powers, including those raised in his Informal Brief (which has been filed as a document in support of this appeal), and we conclude that none has merit. Because this appeal does not present a substantial question, we will summarily affirm the District Court's order denying Powers's habeas petition. See 3d Cir. I.O.P. 10.6. Powers's "Motion for Summary Reversal and Remand Per L.A.R. 27.4" is denied, as is his motion to be released from prison pending the disposition of this appeal.

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September 10, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on September 10, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered June 17, 2020, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: October 5, 2020

APPENDIX B.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN J. POWERS,

Petitioner,

v.

WARDEN HERMAN QUAY,

Respondent.

No. 4:20-CV-00138

(Judge Brann)

MEMORANDUM OPINION

JUNE 17, 2020

Presently before the Court is Petitioner John J. Powers' petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241, challenging the recalculation of his good time credits under the First Step Act.¹ Respondent submitted an answer² and Petitioner filed a reply.³ For the reasons that follow, the petition will be denied.

I. BACKGROUND

Petitioner is presently incarcerated at United States Penitentiary at Allenwood in White Deer, Pennsylvania, and has a projected release date of August 8, 2022.⁴ In the petition, Petitioner argues that the Bureau of Prisons has failed to properly credit him with good conduct time under the First Step Act and that he should receive

¹ Doc. 1.

² Doc. 8.

³ Docs. 9. The parties have also filed a supplemental response and a supplemental reply. *See* Docs. 11, 12.

⁴ Doc. 1.

54 days of good conduct time for each year of his sentences imposed, regardless of whether he has been sanctioned with the loss of good conduct time in the past.⁵

Petitioner was first sentenced to an aggregated term of 389 months and 15 days of imprisonment for various federal offenses including possession of a stolen motor vehicle and bank robbery.⁶ During this sentence, Petitioner accrued good conduct time yearly; 614 days of that good conduct time was, however, disallowed due to disciplinary sanctions.⁷ Prior to the First Step Act, according to the BOP's calculations, this sentence was completed on November 20, 2018.⁸ After the completion of that aggregate sentence, Petitioner started to serve a second aggregated sentence of 57 months and 1 day term of imprisonment for escape and interstate transport of a stolen vehicle, as well as assault on a federal officer; Petitioner was projected to complete this second aggregated sentence on February 1, 2023.⁹

After the First Step Act was passed, effectively changing the number of good time credits earnable per year from 47 to 54, the BOP recalculated Petitioner's sentences and good conduct time credits.¹⁰ Under this recalculation, which took into account the 614 days of disallowed good conduct time, Petitioner's first aggregated

⁵ *See id.*

⁶ Doc. 8 at 1.

⁷ Doc. 11 at 3.

⁸ *Id.*

⁹ *See* Docs. 8, 8-1.

¹⁰ *See* Docs. 8, 11.

sentence was completed on June 25, 2018, and his second aggregated sentence is projected to be completed on August 8, 2022, assuming that Petitioner earns all good conduct time to which he is eligible going forward.¹¹

II. DISCUSSION

A. Legal Standard

“Section 2241 is the only statute that confers habeas jurisdiction to hear the petition of a federal prisoner who is challenging not the validity but the execution of his sentence.”¹² A challenge to the calculation of good conduct time is properly brought pursuant to § 2241, “as the action could affect the duration of the petitioner’s sentence.”¹³

B. Analysis

The crux of Petitioner’s contention is that after the First Step Act was implemented, he should have been awarded the full 54 days per year of imprisonment for his completed first aggregated sentence and that his disallowed good conduct time should have been restored after the recalculation. In essence, Petitioner believes that the First Step Act should provide him with a disciplinary clean slate. As Respondent explains in its supplemental answer, however,

¹¹ See Doc. 11.

¹² *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001). See *Zayas v. INS*, 311 F.3d 247, 256 (3d Cir. 2002) (identifying “applications challenging the manner in which a valid federal sentence is carried out” as an example of a “categor[y] of habeas petitions filed under § 2241”).

¹³ *Queen v. Miner*, 530 F.3d 253, 254 n.2 (3d Cir. 2008). See also *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241 (3d Cir. 2005).

Petitioner's good time credits have been properly calculated in conformity with the First Step Act.

Petitioner's prior aggregated sentence consisted of 32 years, 5 months, and 15 days' imprisonment. Had Petitioner not earned any good conduct time, that sentence would expire on August 6, 2021, as the sentence commenced on February 22, 1990, and Petitioner was awarded 366 days of jail time credit for time spent in custody prior to his sentencing.¹⁴ During this prison term, Petitioner earned good time credit under the prior calculation of 47 days per year; however, Petitioner lost approximately 614 of those earned days due to disciplinary sanctions. Therefore, before the First Step Act, that aggregated sentence expired on November 20, 2018.

After the First Step Act, the Bureau of Prisons recalculated Petitioner's good time credits, utilizing the 54 days per year mandated by the act. As Respondent carefully explains in the supplemental answer, Petitioner earned 1752 total days of good time credit based on 54 days a year on his first aggregated sentence.¹⁵ That, however, was reduced by 614 days due to disciplinary sanctions, leaving Petitioner with 1138 days of good conduct time.¹⁶ Applying those days to his first aggregated sentence, his new, post-First Step Act sentence completion date is June 25, 2018, after which Petitioner began to serve his second aggregated sentence.

¹⁴ See Docs. 8-1, 11.

¹⁵ See Doc. 11.

¹⁶ The complete mathematical calculations have been provided in Respondent's supplemental answer and will not be replicated here. See Doc. 11 at 3-4.

As to Petitioner's contention that the First Step Act recalculation should restore his disallowed good conduct time, Petitioner has provided no authority to support this proposition and the Court can find none. According to Petitioner, the BOP lacks the legal authority to maintain penalties accrued (the loss of good time credits) under 18 U.S.C. § 3624(b), because that statute was repealed by the First Step Act. Thus, the act grants a full 54 days per year, and the prior disallowance of good conduct time cannot be applied to the "new" First Step Act good conduct time days because, Petitioner alleges, § 3624(b) was repealed. I disagree.

Petitioner may not avoid the consequences of his past disciplinary infractions by engaging in statutory sophistry. Section 3624(b) was not repealed. It was amended by the First Step Act, and that amendment changed only the method by which good conduct time is calculated.¹⁷ Further, what text was retained and not altered by the First Step Act is that section's provision that "if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate."¹⁸ There is thus ample authority for the BOP to deduct the previously disallowed good conduct time from Petitioner's post-First Step Act good

¹⁷ See First Step Act of 2018, Pub. L. No. 115-391, § 102(b)(1)(A) (amending 18 U.S.C. § 3624(b)(1)).

¹⁸ 18 U.S.C. § 3624(b)(1).

conduct time calculation. Because the Bureau of Prisons has correctly calculated Petitioner's good time credits—including the disallowance of some of those credits due to disciplinary sanctions—the petition lacks merit and will be denied.

III. CONCLUSION

For the reasons set forth above, the Petition will be denied. An appropriate Order follows.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. POWERS,

Petitioner,

v.

WARDEN HERMAN QUAY,

Respondent.

No. 4:20-CV-00138

(Judge Brann)

ORDER

JUNE 17, 2020

In accordance with the accompanying Memorandum Opinion, **IT IS
HEREBY ORDERED** that:

1. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, Doc. 1, is **DENIED**;
2. Petitioner's Motion/application for release on recognizance or surety or to home confinement, Doc. 13, is **DENIED as moot**; and
3. The Clerk of Court is directed to **CLOSE** this matter.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge