

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2660

DERRICK G. JAMES,

Petitioner,

v.

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

December 10, 2020

PER CURIAM.

The petition for writ of certiorari is denied on the merits.

ROWE, WINOKUR, and NORDBY, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

"Appendix A"

AUGUST 16, 2018	PETITION FOR WRIT OF MANDAMUS	008 - 019
SEPTEMBER 05, 2018	APPLICATION FOR CIVIL INDIGENT STATUS - INDIGENT - SCHMIDT PRISONER	020 - 023
SEPTEMBER 18, 2018	ORDER TO SHOW CAUSE	024 - 026
NOVEMBER 13, 2018	RESPONDENT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO ORDER TO SHOW CAUSE	027 - 029
NOVEMBER 30, 2018	ORDER GRANTING EXTENSION OF TIME	030
JANUARY 18, 2019	MOTION TO CONSOLIDATE CASE NUMBERS 2018 CA 002108 AND 2018 CA 1820	031 - 033
JANUARY 18, 2019	MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSE	034 - 037
JANUARY 29, 2019	ORDER GRANTING MOTION TO CONSOLIDATE CASE NUMBERS 2018 CA 002108 AND 2018 CA 1820 (CASE NUMBER 2018 CA 2108 CONSOLIDATED INTO 2018 CA 1820)	038 - 039
JANUARY 29, 2019	ORDER GRANTING DEPARTMENT'S MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSE TO ORDER TO SHOW CAUSE	040 - 041
FEBRUARY 06, 2019	MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSE	042 - 044
FEBRUARY 13, 2019	ORDER GRANTING DEPARTMENT'S MOTION FOR ENLARGEMENT OF TIME TO FILE RESPONSE TO ORDER TO SHOW CAUSE	045 - 046
MARCH 01, 2019	PLAINTIFF'S RESPONSE TO FL DOC'S REQUEST FOR ENLARGEMENT OF TIME TO FILE RESPONSE	047 - 049
APRIL 15, 2019	RESPONSE TO ORDER TO SHOW CAUSE	050 - 114
APRIL 25, 2019	MOTION FOR EXTENSION OF TIME	115 - 118
MAY 03, 2019	PLAINTIFFS REPLY TO DEPARTMENTS RESPONSE TO ORDER TO SHOW CAUSE	119 - 151
* JUNE 25, 2019	ORDER DENYING PETITION FOR WRIT OF MANDAMUS	152 - 156

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
MARTIN CORRECTIONAL INSTITUTION
RECORDS OFFICE

MEMO To: James, Derrick **DC#:** 536293 **Housing:** A4102U
FROM: J. Ingraham, CSS
DATE: August 15, 2018
SUBJECT: Sentence Audit

A/001-006: Re-audit Of The Chaining To Respond To Grievance,
Case 99-721 Consecutive to Any Active Sentence,
Chained to 94-16096 Should Have Been Chained to 98-28312,
20 Year Term,
Corrected,
Increased TRD by 20 Years from 7/4/29 to 7/23/48,
Now an overall 53 Year 6 Month Term.

TRD changed from: 07/04/2029 **to** 07/23/2048

J. Ingraham,
Correctional Sentence Specialist

"Appendix B"

Appealed to no avail.

Martin CI

REQUEST FOR ADMINISTRATIVE REMEDY ~~MAILED/PED~~
WITH AGENCY CLERK

PAGE

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RE: JAMES, DERRICK FDC# 536293 SEP 05 2018 APPEAL #: 18-6-31769

Department of Corrections
Bureau of Inmate Grievance Appeals

Your request for administrative remedy and/or appeal has been received, reviewed and evaluated.

In response to your grievance a file audit was performed and it was noted Broward County Case 99-721, your 30 year term was designated consecutive to any active sentence. It was incorrectly chained consecutive to Broward County Case 94-16096, your 3 year 6 month term. The chaining of Case 99-721 has been corrected this date to run consecutive to Dade County Case 98-28312, your 20 year term increasing your overall term from 33 years 6 months to 53 year 6 months, changing your tentative release date from 7/4/29 to 7/23/48.

Section 944.275(2), Florida Statutes, requires the Department to establish a "maximum sentence expiration date" for a single sentence or multiple consecutive sentences. That date is calculated as follows: date of first prison sentence + length of all prison terms - judicial credit = maximum sentence expiration date.

The result of this provision is that gain-time may be awarded and/or forfeited pursuant to s. 944.28(1) or (2) from any of the sentences, even the first sentence in a consecutive chain, prior to the combined sentences reaching their combined endpoint. Thus, consecutive sentences are treated as one overall term and no one sentence is satisfied until all sentences are satisfied.

You received 420 days of Basic Gain-time for Case 94-16096 and this gain-time is included in your overall pool of gain-time that is subject to forfeiture as long as your sentences are active.

Date Broward County Case 94-16096 Imposed:

October 22, 1998

Three (3) Years Six (6) months in Days;

+ 1278

County Jail Credit:

- 135

Twenty (20) Years in Days:

+ 7300

County Jail Credit:

- 341

Thirty (30) Years in Days:

+ 10950

County Jail Credit:

- 195

Maximum Release Date:

June 08, 2050

Basic Gain-time Applied (Case 94-16096):

- 420

Incentive Gain-time Accrued:

- 821

Gain-time Forfeited due to Disciplinary Actions:

+ 556

Tentative Release Date:

July 23, 2048

Based on the foregoing, your request is denied.

L. Santana

08/15/18

Signature and Typed
or Printed Name
Employee Responding
(L. Santana)

J. Lewis

Signature of Warden
Asst. Warden, or
Secretary's Representative

8/21/18

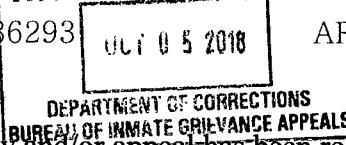
Date:

"Appendix B"

REQUEST FOR ADMINISTRATIVE REMEDY FOR FAIR DEAL

WITH AGENCY CLERK

RE: JAMES, DERRICK FDC# 536293



APPEAL #: 18-6-37074

Martin CI

PAGE

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Your request for administrative remedy and/or appeal has been received, reviewed and evaluated.

Every time an inmate's sentence is questioned the record is required to be audited by institutional staff and central office staff to determine that the sentences are being served as the court intended. It is unfortunate that the chaining error was not caught sooner and corrected. However, upon audit in August 2018, it was noted your 20 year consecutive sentence was not chained to the longest previously imposed sentence, which was your 30 year sentence thus it was corrected increasing your overall term from 33 years 6 months to 53 years 6 months.

The Department is only carrying out the direction of the sentencing court and it is not personal, any error found in an inmate's sentence is required to be corrected. You are sentenced to consecutive terms and it is the department's responsibility to carry out the court's intent.

Based on the foregoing, your request is denied.

L. Santana

09/07/18

Signature and Typed
or Printed Name
Employee Responding
(L. Santana)

J. Boud

Signature of Warden
Asst. Warden, or
Secretary's Representative

9/12/18

Date:

Supreme Court of Florida

TUESDAY, MARCH 2, 2021

CASE NO.: SC21-310

Lower Tribunal No(s).:

1D19-2660; 372018CA002108XXXXXX; 372018CA001820XXXXXX

DERRICK GREGORY JAMES vs. FLORIDA DEPARTMENT OF
CORRECTIONS

Petitioner(s)

Respondent(s)

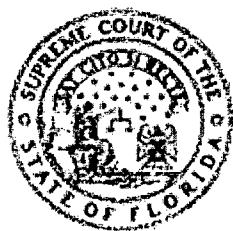
This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:

John A. Tomasino
Clerk, Supreme Court



td

Served:

DERRICK GREGORY JAMES
HON. KRISTINA SAMUELS, CLERK
HON. GWEN MARSHALL, CLERK
HON. RONALD WALLACE FLURY, JUDGE

LANCE ERIC NEFF

"Appendix C"

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

DERRICK G. JAMES, DC # 536293,

Petitioner,

v.

**Case No.: 2018-CA-002108
(consolidated into 2018-CA-001820)**

FLORIDA DEPT. OF CORRECTIONS,

Respondent.

ORDER ADMINISTRATIVELY CLOSING CASE

THIS CAUSE comes before the Court sua sponte. This Court granted the Department's motion to consolidate on January 28, 2019, and consolidated the instant case with Leon County Case No.: 2018 CA 001820. A final order denying Petitioner's petition for writ of mandamus was rendered in Case No.: 2018 CA 001820 on June 25, 2019. The record reflects that an appeal has been filed in the First District Court of Appeal, case number 1D19-2660. The First District Court of Appeal has acknowledged the new case, and it remains pending.

Accordingly, the Clerk of Court is directed to **ADMINISTRATIVELY CLOSE** this case. This order is without prejudice to any party re-opening this case as permitted by law.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida, this 23 day of MARCH, 2020.


RONALD W. FLURY
Circuit Judge

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DERRICK G. JAMES, DC # 536293
Columbia Correctional Institution – Annex
216 S.E. Corrections Way
Lake City, Florida 32025-2013

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FL**

DERRICK JAMES, DC # 536293

Petitioner,

v.

Case Nos.: 2018 CA 001820

DEPT. OF CORRECTIONS.

Respondent.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS CAUSE came before the Court upon Petitioner James' "Petition for Writ of Mandamus," filed August 14, 2018.¹ The court having considered the petition, the response filed by the Florida Department of Corrections, the reply thereto, the court file, and being otherwise fully advised, finds:

Petitioner James alleges that the Respondent Department has violated his right to due process by correcting his sentence structure to be compliant with the orders of the various sentencing courts. Petitioner James also alleges that he has not received the appropriate award of basic gain-time in case number 94-16096. (Pet.).

"Mandamus is an extraordinary remedy based on equitable principles which will issue only upon a showing of a clear legal right in the petitioners to the performance of a legal duty or ministerial act." *See Graham v. Vann*, 394 So.2d 180, 182 (Fla. 1st DCA 1981); *See also Hatten v. State*, 561 So.2d 562, 563 (Fla. 1990).

¹ On September 26, 2018, Petitioner James filed a second Petition for Writ of Mandamus with this Court, case number 2018 CA 2108, raising substantively identical claims. On January 28, 2019, the Court granted the Department's Motion to Consolidate.

Petitioner James was sentenced in the Circuit Court of Broward County on October 22, 1998, for the following:

Case Number: 94-16096 (violation of probation)
Term: Three and one-half (3 1/2) years less 135 days jail credit.
Offense: Burglary/Dwell
Date of Offense: June 3, 1992

Subsequently, Petitioner was transferred to Dade County, where he was sentenced on August 9, 1999 for the following:

Case Number: 98-28312
Term: Count 1- Twenty (20) years as a Habitual Felony Offender pursuant to §775.084(4)(a), Florida Statutes, with a fifteen (15) year minimum mandatory as a Prison Releasee
Re-offender pursuant to §775.082(8), Florida Statutes, less 341 days jail credit.
Count 2- Ten (10) years as a Habitual Felony Offender pursuant to §775.084(4)(a), Florida Statutes, with a five (5) year minimum mandatory as a Prison Releasee
Re-offender pursuant to §775.082(8), Florida Statutes, less 341 days jail credit, concurrent to count 1.
The Court ordered this case consecutive to case 94-16096.
Offense: Count 1- Burglary of a Dwelling
Count 2- Grand Theft
Date of Offense: Both counts- On or about June 21, 1998

After sentencing in Dade County was complete, Petitioner James was transferred back to Broward County, where he was sentenced on August 13, 1999 for the following:

Case Number: 99-721
Term: Count 1- Thirty (30) years as a Habitual Felony Offender pursuant to §775.084(4)(a), Florida Statutes, with a fifteen (15) year minimum mandatory as a Prison Releasee
Re-offender pursuant to §775.082(8), Florida Statutes, less 195 days jail credit.
Count 2- Ten (10) years as a Habitual Felony Offender pursuant to §775.084(4)(a), Florida Statutes, less 195 days jail credit, concurrent to count 1.
The Court ordered this case consecutive to any active sentence.

Offense: Count 1- Burg Dwelling
Count 2- Grand Theft
Date of Offense: Both counts- On or about June 13, 1998

After he was sentenced for the second time in Broward County, Petitioner James was transferred to Palm Beach County, where he was sentenced on October 5, 2001 for the following:

Case Number: 99-1368, on October 5, 2001
Term: Thirty (30) years as a Habitual Felony Offender pursuant to § 775.084(4)(a), Florida Statutes, less 782 days jail credit.
The Court ordered this case concurrent with any active sentence.
Offense: Burglary of an Occupied Dwelling
Date of Offense: On or about May 19, 1998

Petitioner James' gain time claim:

Petitioner James claims an entitlement to 20 days of gain time for case number 94-16096. Under §944.275(4)(a) (1991), Florida Statutes, the Department applied basic gain-time to case 94-16096 at the rate of 10 days per month for each month of the sentence imposed in the amount of 420 days. This action caused the term to reach its end-date prior to Petitioner being received into Respondent's custody. Basic gain time was applied to Petitioner's sentence, (Resp't Ex. A), and is capped at 10 days per month, is distinct from incentive gain time which may be awarded up to 20 days per month. Petitioner James is correct that incentive gain time was not awarded to case 94-16096, this is because that sentence had expired prior to his placement with the Department. Placement within the physical custody of the Department of Corrections is a requirement to earn incentive gain time. *See* Fla. Admin. Code. R. 33-601.101 (3). Therefore, Petitioner James has not demonstrated a clear legal right to his requested relief and this claim is denied.

Additionally, Petitioner James claims that he is not required to serve one third of the sentence for case number 94-16096. (Pet.; Reply). It is unclear to the Court what authority, if

any, Petitioner James intends to use to support this claim. Therefore, Petitioner James has not demonstrated a clear legal right to his requested relief and this claim is denied.

Petitioner James' sentence restructuring claim:

Petitioner James argues that the Department was without authority to restructure his sentence and that the new sentence structure violates the sentences imposed by the courts.

The Department must comply with the sentencing court's orders. In *Moore v. Pearson*, 789 So.2d 316 (Fla. 2001), the Florida Supreme Court stated that "DOC violates the separation of power doctrine when it refuses to carry out the sentence imposed by the court. *See* art. 1 § 18, Fla. Const." *Pearson* at 319; *See Jones v. State*, 570 So.2d 345 (Fla. 5th DCA 1990). An inmate must be given credit for time spent in jail prior to serving his sentence. *See Daniels v. State*, 491 So. 2d 543 (Fla. 1986)(pre-sentencing jail credit on concurrent sentences must be reflected in all the concurrent sentences where an arrest warrant has been executed upon violation of probation). The Department does not have the authority to rectify any alleged problems relating to court ordered sentences, including the award of jail credit. *See Id.*

The Department does have the authority to correct errors discovered. The courts have long recognized that errors are made and that correcting these errors does not violate a prisoner's rights. *See Sullivan v. Jones*, 165 So.3d 26 (Fla. 1st DCA 2015) (The Department is duty-bound to correct inadvertent mistakes in the calculation of gain time and the corresponding release date.); *Vereen v. State*, 784 So.2d 1183 (Fla. 5th DCA 2001)(The Department has the authority to correct record-keeping errors, which thereby increased the appellant's sentence by 330 days).

Initially, the Department structured the terms imposed in cases 98-28312 (twenty years) and 99-721 (thirty years) consecutive to case 94-16096 (the three and ½ year term). However, doing so was a mistake and the sentences in cases 98-28312 (twenty years) and 99-721 (thirty

years) should have been run consecutive to one another, and to the sentence in 94-16096 (the three and ½ year term).

Petitioner James' argument that case number 99-721 should not be structured consecutively to the earlier imposed sentence in case number 98-28312 because the sentencing court said "any active sentence currently being served" is unavailing. The Department is correct in asserting that the sentencing court clearly intended for this sentence to run consecutively. Petitioner James has, therefore, failed to show that he is entitled to mandamus relief.

ORDERED and **ADJUDGED** that the petition for writ of mandamus is **DENIED**.

DONE and **ORDERED** in Chambers, Tallahassee, Leon County, Florida on

JUNE 24, 2019.



RONALD W. FLURY
CIRCUIT JUDGE

Copies provided to:

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**Additional material
from this filing is
available in the
Clerk's Office.**