FILED: November 30, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6822
(1:20-cv-00780-TSE-JFA)

KARSTEN O. ALLEN

Plaintiff - Appellant

v.

J. MAYO, Officer; J. SMITH, Officer; T. D. JOHNSON, Captain; J. FELTNER, Institutional Hearings Officer; T. S. FOREMAN, Unit Manager; ISRAEL HAMILTON, Warden; L. FIELDS, Unit Manager

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6822

KARSTEN O. ALLEN,

Plaintiff - Appellant,

v.

J. MAYO, Officer; J. SMITH, Officer; T. D. JOHNSON, Captain; J. FELTNER, Institutional Hearings Officer; T. S. FOREMAN, Unit Manager; ISRAEL HAMILTON, Warden; L. FIELDS, Unit Manager,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:20-cv-00780-TSE-JFA)

Submitted: November 23, 2021 Decided: November 30, 2021

Before NIEMEYER, FLOYD, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Karsten Obed Allen, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Karsten O. Allen, a Virginia inmate, appeals the district court's order granting Defendants summary judgment on Allen's 42 U.S.C. § 1983 complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Allen v. Mayo*, No. 1:20-cv-00780-TSE-JFA (E.D. Va. May 4, 2021). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Karsten O. Allen, **Plaintiff,**	)	
v.	)	**1:20cv780 (TSE/JFA)**
J. Mayo, et al., **Defendants.**	)	

ORDER

For the reasons stated in the accompanying Memorandum Opinion, defendant's motion for summary judgment [Dkt. No. 29], is GRANTED; and it is further

ORDERED that plaintiff's motions for summary judgment [Dkt. No. 34] and sanctions [Dkt. No. 36] are DENIED.

This is a final Order for the purposes of appeal. To appeal this decision, plaintiff must file a written notice of appeal with the Clerk's office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement indicating a desire to appeal and including the date of the Order the plaintiff wishes to appeal. Failure to file a timely notice of appeal waives the right to appeal this decision.

The Clerk is directed, pursuant to Fed. R. Civ. P. 58, to enter final judgment in favor of defendants; to send a copy of the Memorandum Opinion and this Order to plaintiff pro se and to counsel of record for defendants; and to close this civil action.

Entered this 4th day of May 2021.

Alexandria, Virginia

/s/

T. S. Ellis, III
United States District Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Karsten O. Allen, **Plaintiff,**	)	
v.	)	**1:20cv780 (TSE/JFA)**
J. Mayo, et al., **Defendants.**	)	

MEMORANDUM OPINION

Karsten O. Allen ("Allen" or "Plaintiff"), a Virginia inmate proceeding pro se, filed a civil-rights action pursuant to 42 U.S.C. § 1983, alleging the defendants deprived him of his right to be present at his disciplinary hearing, at which he was convicted and the conviction later overturned; and denied him of an interim review to have his good conduct allowance ("GCA") level corrected after the institutional conviction was overturned. [Dkt. No. 1 at 7-8, 8]. Defendants have filed a motion for summary judgment, supported by affidavits with exhibits attached. [Dkt. Nos. 29, 30]. Allen has been afforded the opportunity to file responsive materials pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and he has responded. Allen has also filed a motion for summary judgment, supported by exhibits and an affidavit [Dkt. Nos. 34, 35],[1] as well as a motion for sanctions. [Dkt. No. 36]. Accordingly, this matter is now ripe for disposition. For the reasons that follow, defendants' motion for summary judgment must be granted, and plaintiff's motions for summary judgment and sanctions must be denied.

[1] In his response to the motion for summary judgment, Allen appears to be attempting to amend his complaint by adding a substantive due process claim. [Dkt. No. 35 at 9]. A claim raised in opposition to a motion for summary judgment is not properly before the Court. See Klein v. Boeing Co., 847 F. Supp. 838, 844 (W.D. Wash. 1994). Allen cannot amend his complaint by raising new matters in a response to a motion. See Hurst v. District of Columbia, 681 F. App'x. 186, 194 (4th Cir. 2017) ("a plaintiff may not amend her complaint via briefing") (citing Commonwealth of Pennsylvania v. PepsiCo, Inc., 836 F.2d 173, 181 (3d Cir. 1988)). Such a claim raised "via briefing" is not properly before the Court and will not be addressed here.

Allen's two claims stem from an October 15, 2019 disciplinary conviction that was subsequently overturned on February 13, 2020. [Dkt. No. 1 at 4-7].

> 1. Allen was denied his right to due process to be present at his disciplinary hearing because defendants Officer J. Mayo, Officer J. Smith, Captain Johnson, Institutional Hearing Officer J. Feltner, Unit Manager T. S. Foreman, and Warden Hamilton because of the submission, review, use, and upholding of his conviction based upon a falsified "Refusal to Appear" form. [Id. at 7-8].
>
> 2. Unit Manager L. Fields denied Allen his due process rights because he refused to provide Allen an interim review to correct his "good time earning level" to remedy Allen's "loss of good time due to" the overturned disciplinary conviction and Fields actions "upheld the taking of the good time credits." [Id. at 8].

Defendants contend that Claim 1 does not involve a loss of a liberty interest because the penalty imposed was a loss of visitation and telephone privileges, which is not an "atypical and significant hardship ... in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). Defendants argue that Claim 2 has no merit because Allen did not lose any accumulated good time credits and he has no protected liberty interest in remaining in or being assigned to a particular good conduct allowance level. Plaintiff argues he is entitled to summary judgment because the defendants submitted and relied upon a false statement that he had refused to attend the hearing, which was later proved true and his conviction was overturned; and that defendant Fields denied him an interim review to correct his "good time earning level," which was based upon the disciplinary charge that was overturned.

I. Undisputed Facts

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Defendants, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, set forth a statement of material facts that defendants contend are undisputed. In response, plaintiff substantially complied with his obligations under those Rules by submitting statements of

undisputed facts, although plaintiff failed to comply with the mandate to cite to specific record evidence.[2]

Accordingly, the following statement of uncontested facts is derived from a review of defendants' statement of undisputed facts, plaintiff's responses, and the record.

1. Allen is and has been at all times pertinent to this action, an inmate incarcerated within VDOC and housed at either Sussex I State Prison (Sussex I) or Keen Mountain Correctional Center (Keen Mountain).

2. On September 20, 2019, while Plaintiff was incarcerated at Sussex I, Correctional Officer T. Johnson charged Allen with Disciplinary Offense #201, Disobeying an Order, after Allen refused to return to his cell and lockdown as instructed following in-pod recreation. [Dkt. No. 30-1 at ¶ 4 and Enclosure A].

3. Allen was served with a copy of the charge on September 21, 2019 and declined the penalty offer. The disciplinary hearing was held on October 15, 2019. [Id. at 4-5]. On the date of the hearing, defendants Mayo, Smith and Johnson signed a refusal to attend the hearing form indicating that Allen refused to appear because he was at recreation. [Id.] The hearing was conducted in Allen's absence, and he was found guilty based on the reporting officer's written testimony. [Id.] The Inmate Hearings Officer, defendant Feltner, imposed a penalty of the 30-day loss of telephone privileges and the 30-day loss of visitation privileges. [Id.]. Defendant Foreman approved the charge and disposition. [Id. at 4].

4. Allen appealed the Inmate Hearings Officer's decision to the Warden, defendant Hamilton, who upheld the decision on November 26, 2019. [Id. at ¶ 5 and Enclosure B].

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[2] The record of admissible evidence includes defendants' affidavits and exhibits, and plaintiff's verified complaint [Dkt. No. 1]; and his memorandum in support of his motion for summary judgment [Dkt. No. 35] and plaintiff's "Affidavit" in his memorandum in support of his cross motion for summary judgment. [Dkt. No. 37]. See Goodman v. Diggs, 986 F.3d 493, 498-99 (4th Cir. 2021) (verified pleadings are the "equivalent of an affidavit").

5. Allen subsequently wrote to the Offender Discipline Unit ("ODU") complaining about his disciplinary conviction because he had not been outside for recreation on October 15, 2019 as stated in the refusal form. [Id. at 9, 14-15]. On February 13, 2020, the ODU investigated the matter, confirmed Allen was not outside and overturned the charge. [Id. at 13]

6. Records reflect that Allen received his 2019 annual review at Sussex I on December 2, 2019. [Dkt. No. 30-2 at ¶ 6 and Enclosure A]. Allen scored in Earning Level II during his annual review and his evaluation was approved by Ms. Foreman, at Sussex I, on January 13, 2020. [Id.]. During the 2019 annual review approved by Ms. Foreman, Allen's earning level did not change from his 2018 annual review, at which time he also scored in Earning Level II. [Id.].

7. Allen was transferred to Keen Mountain on February 21, 2020 "for an unrelated administrative matter." [Dkt. Nos. 1 at ¶ 29; 30-2 at ¶ 4].

8. Allen was initially assigned to Building B, a general population assignment, which was overseen by defendant Unit Manager Fields. [Dkt. No. 30-2 ¶¶ 4, 7].

9. While in Building B, Allen's Counselor was Counselor Booth. [Id. at ¶ 5; Dkt. No. 1 at ¶ 29].

10. If an inmate wants an interim review of his classification, the inmate must submit a request form to his Counselor explaining the reasons why the review is warranted. [Id. at ¶ 5].[3] The inmate's assigned counselor then reviews the request to determine if the inmate meets the criteria for an interim review. [Dkt. No. 30-2 at ¶ 5]. The request is then forwarded to the appropriate Unit Manager or Chief of Housing Unit and Programs. [Id.].

[3] See https://www.vadoc.virginia.gov/files/operating-procedures (VDOC Operating Procedure 830.1, Institution Classification Management, Offender Management & Programs, click on 830.1 Facility Classification Management, last accessed April 30, 2021).

11. Unit Manager Fields does not recall receiving a request from Counselor Booth to conduct an interim review for Allen. [Id. at ¶ 5]. Records do not reflect that Allen asked Counselor Booth for an interim review or that such request was made of Counselor Booth. [Id.]. The CORIS database indicates that an interim review of Allen's good time earning level was not done in 2020 at Keen Mountain. [Id.].

12. Allen desired an interim review because he believed his score from the review at Sussex I on December 2, 2019 would change due to the charge being overturned by the ODU. [Dkt. No. 35 at 2]. Allen asked Booth, verbally, to conduct an interim review on or about February 21, 2020. [Id.]. At some time after speaking with Booth, Allen spoke with defendant Fields who Allen says told him to submit a request and Fields would look into it.

13. Allen remained in Building B until he was moved to segregation in Building C on April 30, 2020, after he received Disciplinary Charge #111, intentionally destroying state property, for kicking his cell door. [Dkt. No. 30-2 at ¶ 7 and Enclosure B].[4] Once Allen was moved to Building C on April 30, 2020, defendant Fields was no longer Allen's Housing Manager and had no control over what occurred in Building C. [Id. at ¶ 7]. With the transfer to Building C, Counselor Booth was also no longer Allen's counselor. [Id.].

14. On May 3, 2020, Allen filed an informal complaint in which he alleged he had been denied an interim review to consider the overturned conviction by the ODU. On May 18, 2020, defendant Fields responded to the informal complaint and stated that "they had been in the process of reviewing [Allen's] alleged 'errors' on your annual review from Sussex I when" Allen was placed in the Restrictive Housing Unit ("RHU"). [Dkt. No. 1-2 at 11; Dkt. No. 36-1].

[4] Allen filed a § 1983 civil action against Fields in the Western District of Virginia on April 12, 2021. Allen v. Fields et al., 7:21-cv-00207-TTC-RSB (Allen II) (filed April 12, 2021). The factual allegations in that complaint overlap with those set forth in the present complaint regarding Fields. Allen II, Dkt. No. 1 at 2.

15. On May 20, 2020, Allen was found guilty of the April 30, 2020 charge, Disciplinary Charge #111, intentionally destroying state property, for kicking his cell door, and fined $15 dollars. [Dkt. No. 30-2].

16. The evaluation of an inmate's security level and good time earning level by the assigned counselor and the ICA during the inmate's annual review is a separate process from the disciplinary hearing process. [Id. at ¶ 8]. While disciplinary charges are one of several factors that have a bearing on the evaluation and scoring of an inmate's good time and security level, it is not the only factor. [Id.].

17. Records indicate that during Allen's December 2020 annual review at Keen Mountain, Allen scored in and was assigned to Earning Level IV. [Id. at ¶ 9 and Enclosure C]. He continues to earn sentence credit at Level IV, which means that he receives zero credit for every 30 days served. [Id.]. The Sussex I charge was not noted or mentioned in the December 2020 annual review.

II. Standard of Review

"When cross-motions for summary judgment are before a court, the court examines each motion separately, employing the familiar standard under Rule 56 of the Federal Rules of Civil Procedure." Desmond v. PNGI Charles Town Gaming, LLC, 630 F.3d 351, 354 (4th Cir. 2011). Summary judgment is appropriate only if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The party seeking summary judgment has the initial burden to show the absence of a material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The facts shall be viewed, and all reasonable inferences drawn, in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255. Parties asserting

that a fact cannot be or is genuinely disputed must comply with the requirements of Fed. R. Civ. P. 56(c) and Local Civ. R. 56(B).

III. Analysis

Plaintiff alleges his Fourteenth Amendment rights were violated at the October 15, 2019 disciplinary hearing because the defendants submitted and relied upon a false statement that he had refused to attend the hearing, which was later proved true and his conviction was overturned; and that defendant Fields denied him his due process rights because he refused to provide Allen an interim review to correct his "good time earning level," which was based upon the disciplinary charge that was overturned. The defendants move for summary judgment asserting that Allen had no liberty interest at stake with regard to the disciplinary hearing and that plaintiff suffered no prejudice in his December 2, 2019 score for his January 13, 2020 review. [Dkt. No. 30 at 6-9 11]. Plaintiff responds that he has a liberty interest and that the defendants denied him a hearing in violation of Wolff v. McDonnell, 418 U.S. 539 (1974). [Dkt. No. 35 at 3-4]. Plaintiff asserts that Fields was aware of his request for an interim review and that he failed to conduct such a review that would have corrected his good time allowance level and restored lost good time from the Sussex I conviction that was overturned. [Id. at 8].

A. Claim 1: October 15, 2019 Disciplinary Hearing

As a matter of law, Allen's motion for summary judgment must be denied. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. AMEND. XIV, § 1. Allen's allegations, even if true, do not state a claim upon which relief can be granted because he has failed to identify a protected liberty interest that would trigger the application of the due process procedures set forth in Wolff, 418 U.S. at 556-57.

"To state a procedural due process violation, a plaintiff must (1) identify a protected liberty or property interest and (2) demonstrate deprivation of that interest without due process of law." Prieto v. Clarke, 780 F.3d 245, 248 (4th Cir. 2015). Prisoners possess a liberty interest only in (1) state-created entitlements to early release from incarceration, see Bd. of Pardons v. Allen, 482 U.S. 369, 381 (1987), and (2) being free from conditions that "impose[] atypical and significant hardship ... in relation to the ordinary incidents of prison life." See Sandin, 515 U.S. at 484. Where a plaintiff fails to identify a protectable liberty or property interest that the defendant's actions placed in jeopardy, he fails to establish that he is owed any level of procedural protection. See Wilkinson v. Austin, 545 U.S. 209, 221 (2005) ("We need reach the question of what process is due only if the inmates establish a constitutionally protected liberty [or property] interest").

Thus, the due process question presents two related but distinct inquiries: whether the loss at issue implicates a liberty interest triggering procedural due process requirements; and, if so, whether the procedures afforded plaintiff satisfied those requirements. See Dilworth v. Adams, 841 F.3d 246, 250-51 (4th Cir. 2016); see also Prieto, 780 F.3d at 259 ("Once a liberty interest is established, the question then becomes what process is due to protect it."). Allen's claim is premised upon his implicit belief "that any state action taken for a punitive reason encroaches upon a liberty interest under the Due Process Clause." Sandin, 515 U.S. at 484. His premise is mistaken because "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights," temporarily losing privileges as "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." Id. at 486.

Here, Allen assumes his loss of telephone privileges and visitation are losses that implicate a liberty interest and that a violation of the procedures outlined in Wolff entitles him to relief.

Allen's position is incorrect.[5] Allen's allegation that he was denied his right to be present at the hearing because of the false refusal to appear form fails to state a viable due process claim because neither a loss of telephone privileges nor visitation involve a recognized liberty interest.

It is well established that inmates do not have an absolute right to use a telephone. United States v. Alkire, No. 95-7885, 82 F.3d 411 (table), [published in full-text format at 1996 U.S. App. LEXIS 7021*1-2] (4th Cir. Apr.10, 1996) ("Alkire's complaint that the portion of the sentence restricting his use of a telephone while in prison is without merit; there is no constitutional or federal statutory right to use of a telephone while in prison.").[6] Thus, plaintiff's loss of telephone privileges simply does not rise to a level deserving of constitutional protection.

Likewise, it is well settled that loss of visitation privileges does not implicate a liberty interest. "The Fourth Circuit has recognized that 'there is no absolute right to prison visitation,' nor is there a 'constitutional right to prison visitation, either for prisoners or visitors ....'" Alkebulanyahh v. Ozmint, 2009 U.S. Dist. LEXIS 59779, *9-10 (D.S.C. July 13, 2009) (quoting White v. Keller, 438 F. Supp. 110, 114-15 (D. Md. 1977), aff'd, 588 F.2d 913 (4th Cir. 1978)),

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[5] The minimum procedural due process requirements in a disciplinary hearing that involves a loss of a liberty interest are: (1) written notice of the claimed violation at least 24 hours prior to the disciplinary hearing; (2) a written statement by the adjudicator as to the evidence relied upon and the reasons for the disciplinary action; and (3) the right to call witnesses and present evidence, when doing so would not be "unduly hazardous to institutional safety or correctional goals." Wolff, 418 U.S. at 563-66. The Fourth Circuit noted that Wolff held "inmates are not entitled to confront the witnesses against them, nor are they guaranteed the right to retained or appointed counsel." Brown v. Braxton, 373 F.3d 501, 504-05 (4th Cir. 2004) (citing Wolff, 418 at 567-70).

[6] See also Freitas v. Ault, 109 F.3d 1335, 1337-38 (8th Cir. 1997) (finding that an involuntary transfer to a higher-security facility and loss of work and phone privileges did not constitute atypical and significant hardship); Boriboune v. Litscher, 91 F. App'x 498, 500 (7th Cir. 2003) (loss of telephone privileges while in disciplinary segregation implicated no liberty interest and triggered no due process protection); Smith v. Roper, 12 F. App'x. 393, 396 (7th Cir. 2001), cert. denied, 534 U.S. 1093 (2002) ("In light of Sandin, the deprivations that Smith suffered as a result of the disciplinary proceedings — namely, 22 days in segregation, a six-month loss of privileges associated with his demotion to C class, and six days without phone privileges — do not implicate a liberty interest."); see, e.g., Tanney v. Boles, 400 F. Supp. 2d 1027, 1040 (E.D. Mich. 2005) (citations omitted) (concluding that an inmate's loss or restriction of telephone privileges for disciplinary reasons is not considered an atypical significant hardship, even when the disciplinary charges are allegedly false, and therefore does not implicate a liberty interest protected by due process); Husbands v. McClellan, 990 F. Supp. 214, 217 (W.D.N.Y. 1998) ("The temporary loss of the various privileges alleged in this case — i.e., telephone, package, commissary, and recreation privileges — does not represent the type of deprivation which could reasonably be viewed as imposing an atypical and significant hardship on an inmate.").

aff'd, 358 F. App'x. 431 (4th Cir. 2009).

> Neither prisoners nor would-be visitors have a constitutional right to visitation. White v. Keller, 438 F. Supp. 110, 115 (D. Md. 1977) (but leaving open the possibility that a permanent ban on all visitation could implicate the Eighth Amendment), aff'd, 588 F.2d 913 (4th Cir. 1978); see also Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 461 (1989) (finding no right to visitation guaranteed by the Due Process Clause). In sum, visitation is a privilege, not a constitutional right. Wright v. Vitale, 937 F.2d 604 (4th Cir. 1991).

Dunford v. McPeak, No. 7:08cv00018, 2008 U.S. Dist. LEXIS 5229, *9 (W.D. Va. Jan. 24, 2008).[7] As noted in Dunford, "[a]pplying Sandin, it is clear that the loss of visitation privileges is 'within the normal limits or range of custody which the conviction has authorized the [prison authorities] to impose,' id., 515 U.S. at 478, and plaintiff experienced no atypical hardship. Thus, there is no federal right to enhanced procedural protections at issue here." 2008 U.S. Dist. LEXIS 5229, *7 n.6.[8]

Further, a violation of one of Wolff's procedural protections, standing alone, does not constitute a due process violation. Bills v. Heyns, No. 15-cv-11415, 2015 U.S. Dist. LEXIS 150198, *4 (E.D. Mich. Nov. 5, 2015) ("the procedural protections established in Wolff are not implicated" unless the disciplinary conviction involves a "liberty interest").

> the procedural mandates of Wolff are not applicable absent disciplinary punishment that results in an actual deprivation of a constitutionally protected liberty or property interest. In other words, even if the plaintiff had sufficiently shown a

[7] See Ware v. Morrison, 276 F.3d 385, 387 (8th Cir. 2002) (holding that plaintiff's due process rights were not violated when his visitation rights were taken away without a hearing because "loss of visitation privileges [are] within the ordinary incidents of confinement" and "[o]nly sanctions that impose atypical and significant hardships ... in relation to the ordinary restraints and incidents of prison life implicate the Due Process Clause"); Berry v. Brady, 192 F.3d 504, 508 (5th Cir. 1999) (inmate "has no constitutional right to visitation privileges"); see also Singleton v. Cecil, 176 F.3d 419, 424 (8th Cir. 1999) (en banc) ("'Analysis of either a procedural or substantive due process claim must begin with an examination of the interest allegedly violated,' ... and 'the possession of a protected life, liberty, or property interest is ... a condition precedent' to any due process claim.'") (citation omitted).

[8] There is also no violation of due process where a disciplinary conviction is overturned in the administrative process. See Morissette v. Peters, 45 F.3d 1119, 1122 (7th Cir. 1995) ("no denial of due process if the error the inmate complains of is corrected in the administrative appeal process"); see also Wycoff v. Nichols, 94 F.3d 1187, 1189-90 (8th Cir. 1996) (finding no liberty interest at stake where a prisoner served forty-five days in administrative segregation before disciplinary decision was reversed). In addition, "[a] claim that a prisoner was 'improperly charged with things he did not do,' standing alone, does not state a due process claim." Harris v. Smith, 482 F. App'x. 929, 930 (5th Cir. 2012) (quoting Collins v. King, 743 F.2d 248, 253 (5th Cir. 1984)).

> violation of procedural due process in connection with the disciplinary charge, the resulting punishment would have to be such that it "impose[d] atypical and significant hardship on [him] in relation to the ordinary incidents of prison life."

Perdue v. White, No. 7:14cv2143, 2015 U.S. Dist. LEXIS 87809, *4-5 (N.D. Ala. May 4, 2015), adopted by, 2015 U.S. Dist. LEXIS 87130 (N.D. Ala., July 6, 2015); cf. Fraley v. Spaventa, No. 5:17cv201 (FDW), 2020 U.S. Dist. LEXIS 10345, *25 (W.D.N.C. Jan. 22, 2020) (finding plaintiff's claim that he "was not allowed to attend" his disciplinary hearing immaterial to due process claim where plaintiff had not been stripped of a protected liberty or property interest at disciplinary hearing); Hines v. Ray, No. 7:05cv565, 2005 U.S. Dist. LEXIS 37616, at *8-9 (W.D. Va. Sept. 22, 2005) ("[P]risoners are only afforded procedural due process protections, such as written notice of charges and the right to call witnesses, when the loss of statutory good time credits or some other liberty interest is at issue. Hines' sole punishment for this conviction was a $10.00 fine .... Therefore, Hines was not entitled to any procedural safeguards during the institutional hearing.") (citation omitted).

For the above reasons, not only must Allen's motion for summary judgment be denied, but the defendants' motion for summary judgment must be granted.

B. Claim 2: Denial of an Interim Review

Allen asserts he is entitled to summary judgment because he requested an interim review and Defendant Fields denied him an interim review. Defendant Fields has disputed whether Allen requested such a hearing because the VDOC's records do not reflect that a request was filed and, that as of April 30, 2020, Fields no longer had any authority over an interim review for Allen because Allen was transferred to the RHU. Fields also contends, as a matter of law, Allen has no due process claim. Given that defendant Fields disputes the material facts upon which Allen relies, Allen's motion for summary judgment must be denied.

Defendant Fields' motion for summary judgment presents two independent rationales. First, Fields correctly points out that Allen does not have a liberty interest in any particular

classification or good conduct time earning rate.[9] See James v. Robinson, 863 F. Supp. 275, 278 (E.D. Va. 1994) ("Inmates have no protected liberty interest in remaining in or being assigned to a particular good conduct allowance level."), aff'd, 45 F.3d 426 (4th Cir. 1994) (unpublished); see also Ewell v. Murray, 813 F. Supp. 1180, 1182 (W.D. Va. 1993) ("The due process clause does not create for a prison inmate a liberty interest in earning a certain number of good time credits.") (citation omitted). The Western District recently issued an opinion that closely mirrors Allen's claim. Spratley v. Mabrey, No. 7:19cv837, 2021 U.S. Dist. LEXIS 25582 (W.D. Va. Feb. 10, 2021).

Spratley, like Allen, involved two interrelated claims. Spratley's first claim alleged he had been denied a liberty interest because he had been denied a witness and video evidence at his disciplinary hearing in which he was found guilty and assessed a fine. The district court found that the imposition of a fine did not rise to the level of a liberty interest and dismissed the first claim. Id. at *2-6. Spratley's second claim alleged "that this conviction reduced his good time earning level," which "in turn, delayed his mandatory parole release date and, he claims, reduced the likelihood that he would be granted discretionary parole." Id. at *2. Spratley held that to the extent that the existence of his conviction could affect his good time earning level, that effect does not trigger constitutionally protected due process rights because

> Virginia prisoners have no liberty interest in any particular classification or good conduct time earning rate, either derived from the United States Constitution, Wolff v. McDonnell, 418 U.S. 539, 557 (1974), or as the result of Virginia laws or policies, Garner v. Clarke, No. 7:18CV00560, 2019 U.S. Dist. LEXIS 157999 (W.D. Va. Sept. 17, 2019), appeal dismissed and remanded for further consideration of the due process claim, No. 19-7601 (4th Cir. Oct. 23, 2019). See also Mills v. Holmes, 95 F. Supp. 3d 924, 931-34 (E.D. Va. 2015) (analyzing Virginia statutes and VDOC regulations and concluding that "maintaining a particular ... earning level" for good conduct "is not a protected liberty interest in Virginia"). The Fourth Circuit has also so held, although in an unpublished decision. West v. Angelone, 165 F.3d 22, [published in full-text format at 1998

[9] Allen does not appear dispute this point and states in his affidavit that he has "not in his complaint nor now allege that a 'change' in [his] good time earning level is a protected liberty interest...." [Dkt. No. 37 at 2].

> U.S. App. LEXIS 27495] (4th Cir. 1998) (unpublished table decision) ("Inmates have no protected liberty interest in remaining in or being assigned to a particular good conduct allowance level ...."). Thus, no due process claim can be asserted based on any change in [an inmate's] good time earning level as a result of this conviction.

Spratley, 2021 U.S. Dist. LEXIS 25582, *6.

Allen alleges that Fields' alleged denial of the interim review was a "taking of good time credits." [Dkt. No. 1 at 8]. Allen's position is not only contrary to well settled law, but Allen points to no evidence that he has lost any accumulated good time credits. Instead, Allen's reference to "loss" refers to potential future credits and not accrued good time credits. The distinction is of significance because he has no such liberty interest in potential future credits. See Dennis v. Clarke, No. 3:15cv603, 2016 U.S. Dist. LEXIS 110036, at *18 (E.D. Va. Aug. 17, 2016) ("It is well established that Virginia inmates do not enjoy a protected liberty interest in the rate at which they earn either Earned Sentence Credits or Good Conduct Allowances.") (citing many cases); Deblasio v. Johnson, 128 F. Supp. 2d 315, 330 (E.D. Va. 2000); ("while the Virginia Code and relevant VDOC regulations require prison officials to provide opportunities for inmates to earn GCA credits, they also give officials *absolute discretion* over GCA classification....Thus, Virginia has not created a statutory or regulatory interest in a particular GCA classification.") (citing James, 863 F. Supp. at 277-78; Ewell, 813 F. Supp. 1180, 1182-83); Holmes v. Cooper, 872 F. Supp. 298, 302 (W.D. Va. 1995) ("The opportunity to earn good time credits is not a constitutionally established liberty interest."); cf. Gaskins v. Johnson, 443 F. Supp. 2d 800, 805 (E.D. Va. 2006) (even if an "infraction resulted in reducing the good-time credits he might earn *in the future*; it did not result in his losing any already-earned credits. This distinction is important because prisoners have no liberty interest in obtaining or retaining a specific prison classification level to allow them to obtain an early release."). Consequently, defendant Fields motion for summary judgment on this ground will be granted.

In addition, under VDOC OP 830.1, the interim review process starts with the Counselor,

not Fields. While Fields response to the informal complaint on May 18, 2020 indicated that "they were in the process of reviewing [Allen's] alleged errors on [Allen's] annual from Sussex I," the response continues noting that the process ended "when [Allen] was placed in the RHU," and that no one had denied Allen "anything." [Dkt. No. 36-1]. The statement Allen attributes to Fields obviously refers to VDOC OP 830.3, which states in pertinent part that "[a]n offender who is confined to a restrictive housing unit is not eligible for advancement to Class Level I." VDOC OP 830.3(V)(G). At the time he was transferred to keen Mountain, Allen was at Level II, which means he was seeking an interim review to obtain Level I.

Thus, it appears from Allen's own exhibit that the process of an interim review (whether officially or unofficially underway) was terminated by Allen's transfer to the RHU, and not by Fields actions.[10] See Evans v. Chalmers, 703 F.3d 636, 647 (4th Cir. 2012) ("[C]onstitutional torts ... require a demonstration of both but-for and proximate causation" and "intervening acts of other[s]" may "insulate" a defendant from liability). Accordingly, Defendant Fields did not cause the denial of an interim review as alleged and he is entitled to summary judgment on this ground as well.

C. Plaintiff's Motion for Sanctions

Allen seeks sanctions on the defendants and defense counsel for statements that Fields made in the affidavit submitted in support of Fields motion for summary judgment. Allen argues that Fields' statements that he did "not recall specifically talking with Allen about his good time" and that the records do "not reflect that Allen asked Counselor Booth for an interim review or that the request was made of" Fields. [Dkt. No. 36 at 1; Dkt. No. 30-2 at 2]. Allen alleges that

[10] Allen has filed suit against Fields and others in the Western District of Virginia alleging in his complaint that Fields filed a false disciplinary charge on April 30, 2020 that resulted in Allen being transferred to segregation. Allen alleges that after asking Fields about the interim review, Fields yelled at Allen to "stop asking about that," Allen II, No. 7:21cv207, Dkt. No. 1 at 4, and states he responded to Fields that Fields was denying him "good time" and that Allen intended to file a lawsuit. Allen then alleges that Fields filed a false disciplinary charge against him for destruction of state property (kicking his cell door), and Allen was transferred to segregation. Id.; 1-1 at 2. The April 30, 2020 institutional conviction has, therefore, clearly not been overturned.

Fields two statements were untruthful and Fields "willfully and intentionally" made the untrue statements. [Dkt. No. 36 at 2]. Allen contends he is entitled to sanctions against defendant Fields and counsel for the defendants, pursuant to Federal Rules of Civil Procedure 11(b)(3), 11(b)(4), and 56(h).

"Whether to award sanctions under Rule 56(h) ... is within the district court's sound discretion." La Michoacana Nat., LLC v. Maestre, No. 3:17cv727, 2020 U.S. Dist. LEXIS 42951, *22 (W.D.N.C. Mar. 12, 2020) (citing Six v. Generations Fed. Credit Union, 891 F.3d 508, 518-19 (4th Cir. 2018)); Nationwide Mut. Fire Ins. Co. v. D.R. Horton, Inc., No. 15-351-CG-N, 2016 U.S. Dist. LEXIS 160148, *13-14 (S.D. Ala. Nov. 18, 2016) (recognizing that in the context of sanctions under Rule 56(h), the Court "has wide discretion in deciding what constitutes bad faith.") (citation omitted). Federal Rule of Civil Procedure 56(h) provides:

> If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

See Stern v. Regency Towers, LLC, 886 F. Supp. 2d 317, 327 (S.D.N.Y. 2012) (for purposes of Rule 56(h), "'bad faith,' ... ha[s been] found only when the attorneys conduct is 'egregious,' such as 'where affidavits contained perjurious or blatantly false allegations or omitted facts concerning issues central to the resolution of the case."). "Sanctions under Rule 11 are appropriate only in 'extraordinary circumstances.'" Id.

Contrary to Allen's argument, simply because an affiant does not recall a conversation does not equate to a false or untrue statement, and there is nothing false or untrue about the records not reflecting a request was filed. See United Energy Corp. v. United States, 622 F. Supp. 43 (D. Cal. 1985) (failure to accurately recall events not bad faith); see also Raher v. Federal Bureau of Prisons, No. 03:09cv526 (ST), 2011 U.S. Dist. LEXIS 117725, *22 (D. Or. Oct. 12, 2011) ("Bad faith in the context of Rule 56(h) requires a deliberate or knowing act for

an improper purpose. Affidavit testimony that is materially contradicted by prior deposition testimony alone is not sufficient to show the necessary bad faith under Rule 56(h).").

Prison personnel interact with hundreds of inmates throughout the course of a single day and for that very reason it is not surprising that VDOC regulations require inmates submit a form of some sort so that a record is established and the VDOC can track matters. Allen has not established any "egregious conduct" that would warrant sanctions and there is no clear evidence that the statements at issue are either false or submitted in bad faith. Fort Hill Builders, Inc. v. Nat'l Grange Mut. Ins. Co., 866 F.2d 11, 16 (1st Cir. 1989). Even if an affidavit "suffers from severe inattention to detail and/or employs misleading language, it does not amount to a deliberate or knowing act for an improper purpose" such as to warrant sanctions. Cableview Communs. of Jacksonville, Inc. v. Time Warner Cable Se., LLC, No. 3:13-cv-306 (J/JRK), 2018 U.S. Dist. LEXIS 236948, *28 (M.D. Fla. Mar. 19, 2018). It is within the court's discretion to deny sanctions even "when an affidavit or declaration 'suggests a misleading implication,' a request for sanctions under Rule 56(h) can be denied because 'bad faith in the context of Rule 56(h) requires a deliberate or knowing act for an improper purpose.'" Id.

Allen relies heavily on Fields May 18, 2020 response to his informal complaint as support that Fields statements he does not recall Allen's request and that no record exists of a written request from Allen is untrue. However, Allen's belief that Fields is not being truthful, alone, is insufficient to warrant sanctions. See Booker v. Robinson, 2015 U.S. Dist. LEXIS 91675 (E.D. Va. July 14, 2015) (denying a motion for sanctions pursuant to Rule 56(h) where the only evidence that an affidavit had been submitted in bad faith was plaintiff's own disagreement with the affidavit), vacated and remanded on other grounds, 644 F. App'x. 219 (4th Cir. 2016). Lastly, there is no evidence that defendants' counsel acted in an improper manner.

V. Conclusion

For the foregoing reasons, defendants' motion for summary judgment [Dkt. No. 29] must

be granted, plaintiff's motions for summary judgment [Dkt. No. 34] and sanctions [Dkt. No. 36] must be denied. An appropriate order will issue alongside this memorandum opinion.

Entered this 4th day of May 2021.

Alexandria, Virginia

/s/

T. S. Ellis, III
United States District Judge

FILED: December 28, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6822
(1:20-cv-00780-TSE-JFA)

KARSTEN O. ALLEN

Plaintiff - Appellant

v.

J. MAYO, Officer; J. SMITH, Officer; T. D. JOHNSON, Captain; J. FELTNER, Institutional Hearings Officer; T. S. FOREMAN, Unit Manager; ISRAEL HAMILTON, Warden; L. FIELDS, Unit Manager

Defendants - Appellees

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix C

(Exhibit D) RECEIVED

30 days loss of phone
30 days loss of visits

VIRGINIA DEPARTMENT OF CORRECTIONS 861.1 A-1

Disciplinary Offense Report

Sussex I State Prison

Report generated by Johnson, T D
Report run on 09/21/2019 at 10:47 AM

Case Number: SXI-2019-2244 1182 Offender Name: Allen, Karsten O DOC #: 1333187 Housing: HU4-A-16T-

Facility: Sussex I State Prison Reference:

Offense Code: 201A Offense Title: Disobeying an Order

Offense Date: 9/20/2019 Approximate Time: 12:09 AM Location: GP Dayroom - HU4-A

DESCRIPTION OF THE OFFENSE

Provide a summary of the details of the offense (i.e.: who, what, when, where, and how; any unusual behavior, any physical evidence and its disposition, and any immediate action taken – including use of force, etc.)

On the above date and approximate time 12:09pm I, Officer T. Johnson was the control room officer had announced lockdown numerous direct orders warning after pod rec had ended and Allen, K #1333187 continue to remain on 4A pod. At 12:12pm it was then announced lockdown again, and the doors cycled open and shut for lockdown. Offender Allen, K #1333187 still declined to follow orders. Upon seeing offender Allen, K #1333187 was still playing cards on the pod he was instructed again to "go to his cell and lockdown". Therefore, this Charge is being written.

☐ **Investigation** Date Completed:

☐ **DESCRIPTION CONTINUED ON ATTACHED PAGE**

Witnesses:

Reporting Officer: Johnson, T
Title: Correctional Officer
Date: 9/20/2019 Time: 8:21 PM

Officer -In-Charge : Johnson, T D Title: Captain

OIC Signature: Capt Johnson Date: 9/21/2019 Time: 10:46 AM

ADVISEMENT OF RIGHTS

By signing below, you indicate your preference regarding the rights indicated. Failure to respond, or indicate a preference, constitutes a **WAIVER** of the first three rights. The following forms are available to the offender **UPON REQUEST** in each housing unit: *Witness Request Form, Documentary Evidence Request Form,* and the *Reporting Officer Response Form.* The offender must submit these request forms to the Hearings Officer within **48-HOURS** of the charge being served.

DO YOU REQUEST A STAFF OR OFFENDER ADVISOR TO ASSIST YOU AT THE HEARING?	☒ Yes	☐ No	☐ REFUSED TO RESPOND
DO YOU WISH TO REQUEST WITNESSES?	☒ Yes	☐ No	☐ REFUSED TO RESPOND
DO YOU WISH TO REQUEST DOCUMENTARY EVIDENCE?	☒ Yes	☐ No	☐ REFUSED TO RESPOND
DO YOU WISH TO WAIVE YOUR RIGHT TO 24-HOUR PREPARATION TIME PRIOR TO THE HEARING?	☐ Yes	☒ No	☐ REFUSED TO RESPOND
DO YOU WISH TO APPEAR AT THE DISCIPLINARY HEARING? Refusal to appear is an admission of guilt, a waiver of witnesses and the right to a disciplinary hearing.	☒ Yes	☐ No	☐ REFUSED TO RESPOND

YOU HAVE THE RIGHT TO QUESTION REPORTING OFFICER
(In person for Category I Offenses; by submitting a Reporting Officer Response Form for Category II Offenses)

YOU HAVE THE RIGHT TO ENTER INTO A PENALTY OFFER.

YOU MAY REMAIN SILENT. Silence does NOT constitute an admission of guilt.

THE CHARGE MAY BE VACATED AND RE-SERVED AS A DIFFERENT OFFENSE, WHICH CAN BE A HIGHER, EQUIVALENT OR LESSER OFFENSE CODE.

YOU MAY BE FOUND GUILTY OF A LESSER-INCLUDED OFFENSE CODE, IN ACCORDANCE WITH OPERERATING PROCEDURE 861.1

You have been informed of the charges against you, and advised of your rights at the Disciplinary Hearing.

Served and Witnessed By: Sgt F. Lee Offender's Signature: Karsten Allen

Print Name: Sgt F. Lee Print Name: Karsten Allen

Date of Service: 9-21-19 Approximate Time: 3:07 pm

IF OFFENDER REFUSES TO SIGN,SERVING OFFICER WILL CERTIFY REFUSAL:

ADVISOR AT SERVICE OF DOR: Sgt F. Lee **FORMS PROVIDED AT SERVICE (IF REQUESTED):** ☒ Yes ☐ No

Date of Hearing: 10/2/2019 Revised Date: 10/15 Revised Date: Revised Date:

RO on vacation. paperwork incomp.

Appendix D
Hearings

EXHIBIT C

Refusal to Appear

Offender Name: K. Allen Number: 133187

Building: 4A Bed/Cell: 16

Offense Code: 201A Offense Title: Disobeying order

Offense Date: 9/20/19 Hearing Date: 10/15/19

On 10-15-19 (Date) at 10:55 (Time) ☒ AM ☐ PM the above named offender was asked by: [illegible] (Print Name and Title) if he/she wished to attend the hearing; however, he/she refused to report to the hearing.

Offender Signature: Refused (Signed)

Staff Signature: [illegible] (Signed)

☒ Offender refused to sign

Note: The completion of this form is not required when the offender waived his right to appear at the disciplinary hearing during the service of the charge.

OUA Side Rec

Capt [illegible]

Case Number: SXI-2019-2244 Name: Allen, Karsten O DOC #: [illegible]187 Housing: HU4-A-16T

Facility: Sussex I State Prison Reference:

OFFENDER'S PLEA AND RIGHTS

Hearing Location: Sussex I State Prison Date: 10/15/2019 Time: 10:55 AM

Plea: ☐ Guilty ☐ Not Guilty ☐ No Plea

Advisor at hearing:

Reason for absence/exclusion of the accused offender:

Was the Reporting Officer present at the Disciplinary hearing? ☐ Yes ☐ No

Has there been a denial of requested witnesses? ☐ Yes ☐ No

Has there been a denial of Documentary Evidence Forms? ☐ Yes ☐ No

DECISION OF THE HEARINGS OFFICER

☒ Guilty ☐ Not Guilty ☐ Dismissed ☐ Accepted Penalty Offer within 24 Hours of Service

☐ Informal Resolution ☐ Reduced to Lesser-Included Offense ☐ Reduced Penalty

☐ Vacated - Offender waived rewrite/reserve of offense ☐ Vacated for Rewrite/Re-serve

☒ **For the charge of:** Offense Title: 201A - Disobeying an Order

☐ **For the Lesser Included Offense of:** Offense Title:

Reason for Decision:

Based upon the preponderance of evidence, based upon the reporting officers written statement, based upon the reporting officer stating that she gave the accused several direct orders to lock down however the accused refused and continued to play cards, based upon the accused refusal to appear by attending outside rec instead of his hearing the accused was found guilty in his absence. The refusal was verified by CO Mayo, CO J. Smith who was booth officer and Capt,. Johnson who was also present . The accused has the right to appeal my decision.

Penalty: IR 3d - Loss of Telephone - Imposed Value: 30 Days

IR 3e - Loss of Visitation - Imposed Value: 30 Days

Comment:

Hearing Officer's Signature: J. Feltner Date: 10/15/2019

Print Name: Feltner, J

INSTITUTIONAL REVIEW:

☒ Approved ☐ Dismissed ☐ Suspended Penalty ☐ Informal Resolution

☐ Reduced Penalty ☐ Rehear ☐ Reduced to Lesser-Included Offense

☒ **For the charge of:** Offense Title: 201A - Disobeying an Order

☐ **For the Lesser Included Offense of:** Offense Title:

Comments:

Penalty: IR 3d - Loss of Telephone - Imposed Value: 30 Days

IR 3e - Loss of Visitation - Imposed Value: 30 Days

Signature: Date: 10/16/2019

Print Name: Foreman, T S Title: Unit Manager

Appendix E

Exhibit D

VIRGINIA
DEPARTMENT OF CORRECTIONS

In **al Complaint** 866_F3_4-16

Informal Complaint

INSTRUCTIONS FOR FILING: Briefly write your issue in the space provided on the Informal Complaint form, preferably in ink. Only one issue per Informal Complaint. Place your complaint in the designated area at your facility. A receipt is issued within 2 working days from the date received if the informal complaint is not returned during intake. If no response is received within 15 calendar days, you may proceed in filing a regular grievance. You may utilize your receipt as evidence of your attempt to resolve your complaint.

An Informal Complaint is not required for an alleged incident of sexual abuse.

Karsten Allen	1333187	9A-16
Offender Name	Offender Number	Housing Assignment

☐ Unit Manager/Supervisor ☐ Food Service ☐ Institutional Program Manager
☐ Personal Property ☐ Commissary ☐ Mailroom
☐ Medical Administrator ☐ Other (Please Specify): _____

Briefly explain the nature of your complaint (be specific):

On 9-18-19 ofc. Mayo gave me an appeal package for a charge that was supposed to be heard on 9-15-19. Included in the package was a refusal to appear form signed by ofc. J. Smith where she stated that I refused to attend the hearing because I went outside rec & ofc. Smith blantantly lied. Pod 4A did not have outside rec on 9-15-19 and the log and camera footage will show that. As a result of this lie, J. Smith's life I was able to attend my hearing.

RECEIVED
SEP 20 2019

Offender Signature _____ Date 9-20-19

Offenders - Do Not Write Below This Line SM-19-IMF

Date Received: 10/28/19 **Tracking #** 03830

Response Due: 11/12/19 **Assigned to:** Hearings

Action Taken/Response:

Disciplinary issues are not addressed via informal complaints but via offender request forms or via appeal process. However whenever we get notice of a refusal to appear it is not only verified by officer Mayo but it is also verified by another officer/staff or hearing officer. Therefore your complaint is without merit and you can address your concerns on your appeal.

RECEIVED
NOV 04 2019

J. Feltner
Respondent Signature

J. Feltner IHO
Printed Name and Title

10-29-19
Date

WITHDRAWAL OF INFORMAL COMPLAINT:

I wish to voluntarily withdraw this Informal Complaint. I understand that by withdrawing this Informal Complaint, I will not receive a response nor will I be able to file any other Informal Complaint or Grievance on this issue.

Offender Signature: _____ Date: _____

Staff Witness Signature: _____ Date: _____

Revision Date: 4/25/16

Appendix G

Exhibit E (cont-d)

COMMONWEALTH OF VIRGINIA
Department of Corrections

Israel Hamilton
Warden

Division of Institutions
Eastern Region

Sussex I State Prison

24414 Musselwhite Drive
Waverly, Virginia 23891-2222
Phone: (804) 834-9967ext.41364
Fax: (804) 834-4084

OFFENDER NAME:	Karsten Allen	OFFENDER NUMBER:	1333187
OFFENSE CODE	201A	OFFENSE DATE:	9/22/2019
OFFENSE TITLE:	Disobeying an Order		
HEARING DATE:	10/15/2019	HEARING'S OFFICER DECISION	Guilty
PENALTY IMPOSED:	IR 3d-Loss of Telephone-Imposed Value:30 Days IR 3e- Loss of Visitation-Imposed Value: 30 Days	CASE NUMBER:	SXI-2019-2244
DECISION RENDERED-WARDEN: Upheld			
WARDEN'S SIGNATURE: [signature]		**DATE:** 11-26-19	
This correspondence is forwarded to you in response to the issue(s) cited in your appeal of the offense referenced above. A thorough review of the issues relative to the administration of the disciplinary action initiated against you was conducted, and the rationale for the decision at this level is as follows:			

A *Refusal to Appear Form* was completed on October 15, 2019, to show that you failed to be present for the disciplinary hearing. Your refusal to appear was an admission of guilt and a waiver of your witnesses. You submit the following procedural errors for review:

Issue #1: You claimed that Officer J. Smith lied and said you went to outside recreation

I can find neither serious procedural error, nor justifiable reason to modify/disapprove the decision or the penalty assessed by the Institutional Hearings Officer in your case. This charge is **UPHELD.**

Only Category I convictions can be appealed to the Regional Administrator. Category II convictions cannot be appealed to the Regional Administrator, with the exception of O.P. 861.1, Section XVIII, F.2. You may appeal this decision within fifteen (15) calendar days to the Regional Administrator, Disciplinary Appeals Unit, DOC, P.O. Box 26963, Richmond, VA 23261
C: VACORIS

Appendix H

EXHIBIT F

VIRGINIA DEPARTMENT OF [illegible]RECTIONS

DOC-11H
DOC L[illegible]n: Sussex I State Prison
Report generated by Thorne, C L
Report run on 01/16/2020 at 02:35 PM

Institutional Classification Authority Hearing

Offender Name: Allen, Karsten O **DOC#: 1333187** **DOC Location: Sussex I State Prison** **Bed Assignment: HU4-A-16-T**

Part I: ICA Referral Notice

You were scheduled to appear before the Institutional Classification Authority on or after 12/02/2019 for Good Time Level, Security Level

Comments: Annual Treatment Goals 2019/2020
Obtain and maintain infraction-free conduct
Enroll in and participate in program(s) of choice

Recommendations:
GCA Level 2 with 65 points
SL 4 with 32 points and an H6 override

Authorizing Staff Date & Time

Hearing Date:

Offender Statement: "It's not fair. I have been doing everything that I am supposed to do and received a bogus charge during my review period."

Reporting Staff Comments: Counselor explained subject's Annual Review regarding his Good Time Level, Security Level, Case Plan Goals, and Timeline accordingly."

Part II: Hearing Disposition

Good Time Level Review:

The ICA recommends: Class Level change to Level 2

Rationale: Subject scores 65 points for a GCA Level 2. Offender received one (1) disciplinary conviction during review period consisting of 201A in September, 2019. Next, offender will gain 20 out of 40 points for annual goals as he did not maintain an infraction-free status (-20 points) but did participate in programs of his choice (20 points). Lastly, offender will accrue 15 out of 20 pro-rated points for work/vocation.

ICA: Foreman, T S Date: 1/13/2020

Administrative Review:

Decision: Approve Class Level change to Level 2

Foreman, T S Date: 1/13/2020

Comments: Subject scores 65 points for a GCA Level 2. Offender received one (1) disciplinary conviction during review period consisting of 201A in September, 2019. Next, offender will gain 20 out of 40 points for annual goals as he did not maintain an infraction-free status (-20 points) but did participate in programs of his choice (20 points). Lastly, offender will accrue 15 out of 20 pro-rated points for work/vocation.

Security Level Review:

The ICA recommends: Security Level change to 4 - Close

Rationale: Offender is being recommended for a security level 4 with 32 points and a H6 override. Offender can be managed at current security level.

ICA: Foreman, T S Date: 1/13/2020

Administrative Review:

Decision: Approve Security Level change to 4 - Close

Foreman, T S Date: 1/13/2020

Appendix I

Exhibit G

COMMONWEALTH OF VIRGINIA

Department of Corrections

HAROLD W. CLARKE
DIRECTOR

P.O. BOX 26963
RICHMOND, VIRGINIA 23261
(804) 674-3000

February 13, 2020

Karsten Allen #1333187
Sussex I State Prison
24414 Musselwhite Drive
Waverly, VA 23891

RE: SXI-2019-2244

Mr. Allen,

I have spoken with the Unit Manager from your assigned housing unit on the day in question and he has confirmed that your housing unit did not have outside recreation on the day in question. As such, the charge against you has been **OVERTURNED** by the Offender Discipline Unit.

Sincerely,

Zachary Davis
Offender Discipline Unit

Appendix I

Va. Code Ann. § 53.1-202.2

Copy Citation

Current through the 2021 Regular Session and Special Sessions I and II of the General Assembly

Code of Virginia 1950 Title 53.1. Prisons and Other Methods of Correction. (Chs. 1 — 15) Chapter 6. Commencement of Terms; Credits and Allowances. (Arts. 1 — 4) Article 4. Earned Sentence Credits for Persons Committed Upon Felony Offenses Committed on or After January 1, 1995. (§§ 53.1-202.2 — 53.1-202.5)

§ 53.1-202.2. Eligibility for earned sentence credits.

A. Every person who is convicted of a felony offense committed on or after January 1, 1995, and who is sentenced to serve a term of incarceration in a state or local correctional facility shall be eligible to earn sentence credits in the manner prescribed by this article. Such eligibility shall commence upon the person's incarceration in any correctional facility following entry of a final order of conviction by the committing court. As used in this chapter, "sentence credit" and "earned sentence credit" mean deductions from a person's term of confinement earned through adherence to rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and by meeting such other requirements as may be established by law or regulation. One earned sentence credit shall equal a deduction of one day from a person's term of incarceration.

B. A juvenile convicted as an adult and sentenced as a serious juvenile offender under clause (i) of subdivision A 1 of § 16.1-272 shall be eligible to earn sentence credits for the portion of the sentence served with the Department of Juvenile Justice in the manner prescribed by this article. Consideration for earned sentence credits shall require adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

Appendix K

History

Va. Code Ann. § 53.1-25

Copy Citation

Current through the 2021 Regular Session and Special Sessions I and II of the General Assembly

Code of Virginia 1950 Title 53.1. Prisons and Other Methods of Correction. (Chs. 1 — 15) Chapter 2. State Correctional Facilities. (Arts. 1 — 9) Article 1. General Provisions. (§§ 53.1-18 — 53.1-31.4)

§ 53.1-25. Director to prescribe rules; rules to be available to prisoners.

The Director may prescribe rules for the preservation of state property and the health of prisoners in state correctional facilities and for the government thereof. Printed copies of all such rules shall be made available to prisoners under such terms and conditions as the Director may prescribe.

History

Code 1950, § 53-23; 1970, c. 648; 1977, c. 354; 1982, c. 636.

▼ Annotations

Appendix L

CASE NOTES

This section does not mandate prisoner access

Va. Code Ann. § 53.1-202.3

Copy Citation

Current through the 2021 Regular Session and Special Sessions I and II of the General Assembly

Code of Virginia 1950 Title 53.1. Prisons and Other Methods of Correction. (Chs. 1 — 15) Chapter 6. Commencement of Terms; Credits and Allowances. (Arts. 1 — 4) Article 4. Earned Sentence Credits for Persons Committed Upon Felony Offenses Committed on or After January 1, 1995. (§§ 53.1-202.2 — 53.1-202.5)

Notice

This section has more than one version with varying effective dates.

§ 53.1-202.3. (Effective July 1, 2022) Rate at which sentence credits may be earned; prerequisites.

A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a conviction for any offense of:

1. A Class 1 felony;

2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;

3. Any violation of § 18.2-40 or 18.2-45;

4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person results from providing any material support, or of subsection A of § 18.2-46.6;

5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;

6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any

felony violation of § 18.2-57

7. Any felony violation of § [illegible]-60.3;

8. Any felony violation of § 16.1-253.2 or 18.2-60.4;

9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;

10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

11. Any violation of § 18.2-90;

12. Any violation of § 18.2-289 or subsection A of § 18.2-300;

13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;

14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-362 or subsection B of § 18.2-371.1;

15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of subsection A of § 18.2-374.1:1;

16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or

17. A second or subsequent violation of the following offenses, in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between each conviction:

a. Any felony violation of § 3.2-6571;

b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;

d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;

e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;

f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of § 18.2-79;

g. Any violation of § 18.2-89 or 18.2-92;

h. Any violation of subsection A of § 18.2-374.1:1;

i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or

j. Any violation of subdivision E 2 of § 40.1-29.

The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs to which a person is assigned pursuant to § 53.1-32.1.

B. For any offense other than those enumerated in subsection A for which sentence credits may be earned, earned sentence credits shall be awarded and calculated using the following four-level classification system:

1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more than one minor correctional infraction and no serious correctional infractions as established by the Department's policies or procedures.

2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as established by the Department's policies or procedures.

3. Level III. For persons rec[illegible] Level III sentence credits, 3.5 days sh[illegible]e deducted from the person's sentence for every 30 days served. Level III sentence c[illegible]its shall be awarded to persons who participate in and cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as established by the Department's policies or procedures.

4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that person causes substantial security or operational problems at the correctional facility as established by the Department's policies or procedures.

C. A person's classification level under subsection B shall be reviewed at least once annually, and the classification level may be adjusted based upon that person's participation in and cooperation with programs, job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's classification and calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming, educational, or employment opportunities at the correctional facility at which the person is confined. Records from this review, including an explanation of the reasons why a person's classification level was or was not adjusted, shall be maintained in the person's correctional file.

D. A person's classification level under subsection B may be immediately reviewed and adjusted following removal from a program, job assignment, or educational curriculum that was assigned pursuant to § 53.1-32.1 for disciplinary or noncompliance reasons.

E. A person may appeal a reclassification determination under subsection C or D in the manner set forth in the grievance procedure established by the Director pursuant to his powers and duties as set forth in § 53.1-10.

F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation in and cooperation with programs afforded to the juvenile during that portion of the sentence. The Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile offender under § 16.1-285.1.

G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

History

1994, 2nd Sp. Sess., cc. 1, 2; 2008, c. 517; 2020, Sp. Sess. I, cc. 50, 52; 2021, Sp. Sess. I, c. 389.

▼ Annotations

3. Upon an administrative request for review after significant decline has been noted in one or more areas of evaluation.
4. Regardless of the type of Class Level review, reduction of an offender's Class Level should be based on:
   a. Determination of a significant decline in any area of performance and responsibility to the extent that the offender clearly has failed to maintain behaviors that led to advancement to the present class
   b. Due consideration will be given to criteria and restrictions that affect the offender in an administrative placement, special status, or with special needs as set forth in this operating procedure.
   c. Due consideration will be given to the input of the offender's counselor, work supervisor, building officer, and other staff knowledgeable of the offender's progress towards attainment of treatment objectives in the offender's *Reentry Plan.* (5-ACI-5B-03; 4-4297) See Operating Procedure 820.2, *Re-entry Planning.*

C. Each good time award evaluation must be based on the offender's performance during the entire preceding year in the areas of offender performance and responsibility as follows:
   1. Infractions - 0-40 points available
      a. A maximum score of 40 points must be awarded to offenders with no convictions under the *Offender Disciplinary Procedure.*
      b. Deduct 40 points (award 0 points) for any conviction of offenses numbered 100 through 108. See Operating Procedure 861.1, *Offender Discipline, Institutions.*
      c. Deduct 20 points for each conviction of other Category I (100 series) offenses.
      d. Deduct 10 points for each conviction of Category II (200 series) offenses.
   2. Reentry Plan, Annual Goals - 0-40 points available
      a. Award points based on the offender's achievement of goals established at the beginning of the review year in one or more of the following areas:
         i. Educational
         ii. Program
         iii. Vocational
         iv. Other
      b. Points should be allocated based on the number of goals set for the year i.e., for 2 goals - up to 20 points could be awarded for achievement of each goal.
   3. Work - 0-20 points available (5-ACI-7A-13; 4-4461; 2-CI-4A-8)

      The score for work should be prorated based on the percentage of the year that the offender was employed.

D. Goal Setting and Points Awards
   1. Goals should be achievable in the offender's current situation, related to identified criminogenic factors, and represent progress toward the offender's Reentry Preparation Goals. See *Reentry Plan*, Operating Procedure 820.2, *Re-entry Planning*.
   2. VACORIS will provide a tentative point score based on the offender's current infraction convictions, progress toward reentry plan goals, and work assignment.
   3. Offenders should be recognized for making reasonable efforts to achieve their goals.
      a. Offenders should not be penalized for unavailability of educational, program, vocational, or work opportunities if the offender can document consistent, reasonable efforts to achieve the goal.
      b. Offenders should not be rewarded for lack of consistent, reasonable efforts even though they may be meeting the goal at the time of the review.

c. Consideration, either through point scores or override, should be given to offenders who moved from one institution to another during the year which resulted in changed goals or affected achievement of their goals.

d. The counselor and the ICA may adjust the tentative point scores or recommend overrides as needed to accurately reflect the offender's overall performance and progress for the entire review period. The Counselor or ICA should justify and document each adjustment or override in the "Comments" section.

E. Annual Review

1. Annual reviews should be conducted each year within 30 days after the anniversary of the offender's Initial Classification Date (ICD); i.e. was first assigned a Security Level.
2. Offenders who have had one or more annual reviews based on the CRD will continue to have annual reviews based on the CRD.

F. Class Level Evaluation

1. Class Level changes and EGT awards should not be made within 60 days of an offender's expected discharge date.
2. The counselor should determine the appropriate Class Level based on the total Class Level Evaluation Points scored by the offender.
3. Class Level Point Ranges
   - Class Level I 85 to 100 points
   - Class Level II 65 to 84 points
   - Class Level III 45 to 64 point
   - Class Level IV 44 points or below
4. Prior to an Annual Review or other possible ICA review of Good Time Class Level, the counselor should review the point score in VACORIS and determine if the offender is currently in the appropriate Class Level.
5. At the annual review, if it is determined that an offender is currently in the appropriate Class Level, the counselor should document in VACORIS that that no change is recommended subject to ICA action and Facility Unit Head review.
6. For a change in Class Level, a classification hearing must be held in accordance with Operating Procedure 830.1, *Institution Classification Management*, for the ICA to consider the appropriate Class Level assignment.
7. The ICA should review the point score and any supporting documentation for proper scoring and to determine if an override is needed to place the offender in the appropriate Class Level.
8. The ICA should record the recommended Class Level and any override required in VACORIS.
9. For annual review changes in Class Level, the effective date for the change should be the anniversary of the ICD or CRD as applicable.
10. Any offender's Class Level point score and subsequent Class Level can be rejected on the basis of one or more of the approved overrides listed below. All overrides must be justified with override numbers and supporting comments noted on VACORIS.

Override	Override Reason
#1	A point score in one area of evaluation is inordinately high or low affecting the Class Level
#2	Seriousness or number of institutional infractions warrants a lower Class Level.
#3	A significant recent decrease in an area of evaluation warrants a lower Class Level.
#4	Extraordinary improvement in one or more areas of evaluation warrants a higher Class Level.
#5	Lack of program availability inordinately affects Class Level.
#6	More information needed (i.e. under investigation, longer period of adjustment needed).

#7	Refusal of or removal from any required educational, program, vocational, or work assignment must result in an automatic override to Level IV. See instructions below.
#P	Offender has reentered all required educational, program, vocational, or work assignments that resulted in use of override #7

11. Use of Overrides #7 and #P - See Operating Procedure 820.2, *Re-entry Planning.*
    a. For any educational, program, vocational, or work assignment required on the *Reentry Plan*, if the offender refuses to either enroll in or attend, or the offender attends but is removed due to disruptive, non-participatory, or non-compliant behaviors, the offender should be charged with offense code 200 in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions.*
    b. An offender identified as a High Risk Sexual Aggressor (HRSA) (See Operating Procedure 810.1, *Offender Reception and Classification.*) that does not comply with therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse should be charged with offense code 200 in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions.* (§115.78[d])
    c. An offender that does not comply with requirements to participate in a residential cognitive community program should be charged with offense code 119e in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions.*
    d. An offender who refuses to comply with COV §19.2-310.2 by refusing to provide a DNA sample should be charged with offense code 116 in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions.*
    e. An offender who refuses to comply with registration requirements in accordance with Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registration*, should be charged with offense code 119d in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions.*
    f. If the offender is found guilty of the charge, the offender must be referred to the ICA to be placed in Class Level IV effective the date the charge was written. A #7 override should be used regardless of the offenders' Class Level score.
    g. A #7 override may be used for reviews related to enhanced penalties for repeated violations of Category I offenses not allowing an offender to earn good time for a period in excess of one year or until they comply with some requirement (such as Offense Code 116 or 119).
    h. The #7 override will flag the offenders' file so that he or she is not allowed to earn good time until meeting the specified requirements.
    i. Once it is clear that the offender is sincere and actively participating in the specified requirement, the offender's case should be brought before the ICA for review of Good Time Award Class Level. Time spent on a waiting list does not count as participation.
    j. As an incentive, offenders participating in an Intensive Reentry Cognitive Community program while in Class Level IV due to removal from a Therapeutic Community program may be reviewed for award of good time.
        i. Such offenders assigned to an Intensive Reentry Cognitive Community can receive a Good Time Class Level review at 90 days in the program.
        ii. At the discretion of facility staff, an offender who has adequately participated for a minimum consecutive 90 day period can advance to the appropriate Class Level effective from the date of their entry into the Cognitive Community.
            (a) The offender's Good Time Class Level can advance one level, only.
            (b) The effective date of the Class Level change must be six months or less prior to the offender's GTRD.
            (c) The class level change must be submitted no more than 90 days and no less than 60 days prior to the offender's release.
            (d) An offender's adjusted days may be utilized to allow adequate time to process the

offender's release.

(e) An Override #P is required to move an offender out of Class Level IV under Override #7.

iii. Once a higher Class Level has been achieved, offenders will be monitored to determine if their behavior continues to warrant the current Class Level and may be adjusted at any time for non-compliant behavior or disciplinary convictions.

iv. Any offender removed from the Intensive Reentry Cognitive Community will forfeit any good time awarded under this provision.

k. An Override #P is required to move an offender out of Class Level IV when an Override #7 has been used. Any change in Good Time Award Class Level should be retroactive to the date the offender met the specified requirement.

12. VACORIS will generate a notification to the Facility Unit Head to review the ICA's action and approve or disapprove it. An offender's Class Level will only be changed on Facility Unit Head approval of the ICA action.

13. A *Class Level Evaluation Report* (See Attachment 1 for sample.) or *Institutional Classification Authority Hearing* report (See Operating Procedure 830.1, *Institution Classification Management.*) should be printed and provided to the offender showing Facility Unit Head approval or disapproval of the ICA action. There is no need for filing a hard copy of either *Report.*

14. Facility Unit Head approval of ICA action to change Class Level will generate a notification to the Court and Legal Section to update the offender's time calculation.

G. An offender who is confined to a ~~restrictive~~ Restorative Housing Unit is not eligible for advancement to Class Level I. (changed 9/1/21)

1. If in Class Level I at the time of assignment to ~~restrictive~~ restorative housing, the ICA should conduct a formal review within 90 days to determine if that Class Level is still appropriate.

2. It is intended that an offender in ~~restrictive~~ restorative housing should be ready to return to general population on advancement to Class Level II.

H. Criteria and Restrictions for Special Status Offenders:

1. Upon transfer back to a local jail facility, the offender's good time award eligibility status should not be affected.

2. Any offender who commits a felony or misdemeanor (except escape convictions) while in confinement will automatically be reduced to Class Level IV effective the conviction date.

a. The offender will not become eligible for advancement in Class Level for 12 months from the conviction date.

b. If the offender is presently serving a sentence under the Good Conduct Time (GCT) system, the new consecutive sentence, or any new concurrent sentence extending the release date established under COV §53.1-159 will be served under the GCA or ESC system once the GCT sentence has been satisfied.

3. Any offender returned to confinement as a result of escape and conviction of a felony, misdemeanor, or a Disciplinary Hearing offense for escape should automatically be reduced to Class Level IV effective the date of the conviction. The offender will not be eligible for advancement in Class Level for 12 months from the date of assignment to Class Level IV.

4. In accordance with COV §53.1-199, an offender with offense dates of July 1, 1993 or later and prior to January 1, 1995 for first degree murder, rape, forcible sodomy, animate or inanimate object sexual penetration, or aggravated sexual battery will not exceed the good conduct earning rate of GCA Class Level III on those related sentences. Any subsequent reduction in an offender's recognition level requires ICA action and Facility Unit Head approval.

a. GCA Class Level III will be administratively assigned in such cases at the time of the offender's initial sentence computation.

modify and develop a *Classification Hearing Docket* to meet institutional needs. Individual inmate notification of PAR actions may be accomplished using forms developed at the institution.

b. For job assignment actions, facility staff should use the *Facility Job Assignment Docket* 841_F6 and the *Offender Work Program Job Application* 841_F5.

c. In ~~restrictive~~ Restorative Housing Units, facility staff should use the *Multi-Disciplinary Team Hearing Docket* to document cases reviewed; see Operating Procedure 425.4, *Management of Bed and Cell Assignments* (Restricted). (changed 9/1/21)

2. Program assignment reviews are informal hearings.
   a. Staff should inform the inmate of the purpose of the hearing, but advance notification is not required.
   b. If the inmate desires to be present, the PAR may permit the inmate to be present.
3. When the review concerns the involuntary removal of the inmate from a job, educational or treatment program assignment, there should be a written or verbal statement from the person requesting the removal.
   a. The written or verbal statement should provide the reason for the removal and the PAR should provide the inmate with the opportunity to be present and make a statement.
   b. If the inmate is present at the hearing, the PAR should inform the inmate of the decision or recommendation at that time.
   c. Staff should advise inmates that are not present of the decision either verbally or in writing.
4. Upon final action by the appropriate approving authority, staff should enter the action into VACORIS and provide a copy of the appropriate review form reflecting the PAR's recommendation and the final decision by the appropriate approving authority to the inmate.

E. Approval of Program Assignment Reviews:

1. All PAR hearings are reviewed and acted on by a staff person as designated below, who will approve, disapprove or no action the case.
   a. Staff should remand all no action cases to the Assistant Superintendent/Institutional Program Manager for further review.
   b. Staff will document all comments and reasons for all disapprovals on the respective forms.
   c. The Facility Unit Head or designee will ensure copies of all classification paperwork are distributed.
2. The Facility Unit Head is the sole and final authority for approving or disapproving PAR recommendations for outside work assignments and must personally approve all work assignments outside the secure perimeter The Facility Unit Head may only delegate this authority to the Assistant Facility Unit Head for Work Centers; see Operating Procedure 841.2, *Offender Work Programs.*
3. The Chief of Security must approve all PAR recommendations for work assignments inside the designated security perimeter but outside the housing unit.
4. The Facility Unit Head may designate one or more supervisory staff to be the final authority for approving and disapproving all other PAR work assignment recommendations. This designated staff member must not be the same individual who served as the PAR for the case under review.

V. Inmate Initiated Review of Progress (5-ACI-5B-09)

A. It is the responsibility of the inmate to initiate the request for an interim review by completing an inmate request identifying exactly why an interim review is warranted.

B. The Counselor should make a recommendation and give justification to support their recommendation, when applicable, and forward the request to the ICA/MDT for consideration.

C. Counselor recommendations for an interim review should generally be based on the following criteria:

Appendix 01