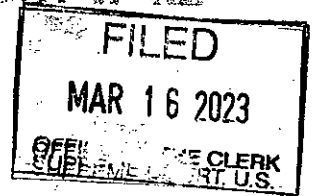


22-7463

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Lexter Kennon Kossie — PETITIONER
(Your Name)

vs.

Bobby Lumpkins (Director TDCJ) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LEXTER KENNON KOSSIE #700661

(Your Name)

3060 FM 3514

(Address)

Beaumont, Texas 77705

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Texas Department of Criminal Justice (TDCJ) violates the Fourteenth Amendment by confining its prisoners past the dates when they are legally entitled to be released based on state statutes created 'liberty interest'?
- 2) Whether (TDCJ)'s GOOD CONDUCT TIME policies are inadequate and unethical, thus, causing systemic overdetection of its prisoners in violation of the Fourteenth Amendment?; and
- 3) Whether TDCJ's deliberate indifference to its inadequate and unethical GOOD CONDUCT TIME policies and practices pose an 'equitable' problem?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Woff v. McDonnell, 418 US 539,557, 94 S.Ct. 2963,2975,41 L.Ed. 2d 935 (1974)

Greenholtz v. Inmates of Nebraska Penal 442 US 1 (1979)

Board of Pardons v. Allen, 107 S.Ct. 2415 (1987)

Madison v. Parker, 104 F3d 765, 768 (5th Cir.1991)

Malchi v. Thaler, 211 F3d 953,957 (5th Cir.2000)

Rummel v. Estelle, 587 F2d 651 (5th Cir.1978)

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ - NA - court appears at Appendix _____ to the petition and is

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

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 12-21-2022.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause of the 14th Amendment of US Constitution

Tex.Crim.Proc. Code, art. 42.18, § 8(a)(b)(3)(1993)(now TEX GOV'T CODE 508.145 (d)(2))

Tex.Crim.Proc. Code, art. 42.18(a)(1993)(now TEX. GOV'T CODE 508.142 (c))

TEX GOV'T CODE 498.003(a)(2011)

STATEMENT OF THE CASE

Since 1993's creation of the one-half law under Tex.Crim. Proc. Code, art.42.18, § 8(b)(3)(now TEX.GOV'T CODE, § 508.145 (d)(2), Texas Department of Criminal Justice (TDCJ) have violated its prisoners' Constitutional rights by "routinely" holding them past their release date. The one-half law of Article 42.18, § 8 (b)(3) requires violent prisoners to serve one-half of the maximum sentence or 30 calendar years which creates a 60-year maximum effective sentence for parole purposes.

In ex-prosecutor Ken Anderson's book: CRIME IN TEXAS, he explains with clarity exactly how the 60-year maximum effective sentence is created by § 8(b)(3).

"Those 3g offenders who committed their crimes after August 31, 1993, must serve the lesser of half the sentence or 30 calendar years. Because of the 30-calendar-year maximum, 60 years is the longest effective sentence a criminal can get. In other words, half of the 60 year sentence is 30 calendar years-the maximum a criminal can serve before being eligible for parole. Sentences of 61 to 99 years or life are, for parole purposes, identical to 60 years",

pp. 123-124 (emphasis added).

There are at least two courts that agree that 60 years is the maximum TDCJ can incarcerate a person. In *Smallwood v. State*, the Court confirmed that:

"In Texas, 60 years is the life sentence, the maximum the State can incarcerate a person".

The Court further stated:

"Here, the appellant was sentenced to 50 years, 10 years short of life imprisonment",

827 SW2d 34 (1st Dist.-Houston 1992).

In *Rummel v. Estelle*, the Fifth Circuit Court of Appeals also confirmed that:

"In Texas a life sentence has essentially the same effect as one for sixty-years",

587 F2d 651 (5th Cir.1978)(emphasis added).

Thus, § 8(b)(3) creates a 'liberty interest' to be released on parole automatically upon serving 60 calendar years or upon accruing 60 years of PAROLE TIME CREDITS for all prisoners serving sentences of 60 to 99 years or life. Section 8(a) clearly states:

"Good time credits SHALL be calculated for a person as if the person were confined in the institutional division during the entire time the person was actually confined".

Thus, art. 42.18 ,§ 8(a) in conjunction with art. 42.18 , § 8 (b)(3) creates the 'liberty interest' to be set-free on parole after serving 30 calendar years with the addition of 30 years of GOOD TIME to equal the 60-year maximum effective sentence because from the plain language of § 8(a) GOOD TIME CREDITS SHALL be calculated as calendar time.

Because 60 years is the maximum TDCJ can incarcerate a person serving sentences of 60 to 99 years or life before being automatically released on parole TDCJ is required to provide a minimum and maximum expiration date for parole purposes only. Thus, 60 years from the date of the offense, for sentences of 60 to 99 years would automatically produce a maximum expiration date for parole purposes allowing the prisoner to serve the remainder of sentence under the supervision of the paroles division. See § 8 (a), again. A minimum expiration date is computed by adding 30 calendar served plus 30 calendars of GOOD TIME CREDITS to equal the 60-years maximum TDCJ can incarcerate a person. However, TDCJ has "routinely" refused to provide minimum and maximum expiration dates to sentences of 60 years to 99 years or life even though all these sentences have a maximum expiration date of 60 years from the date of the offense. For consideration see INSTITUTIONAL TIME SHEET at APPENDIX B where it is shown that TDCJ calculate minimum and maximum expiration dates at 01/01/9999 for all sentences of 60 years to 99 years or life. This

Thus, this inaccurate and unethical calculation of GOOD TIME CREDITS has caused TDCJ to deny prisoners their due process rights to timely release from incarceration. Without a minimum and maximum expiration date TDCJ can arbitrarily set any minimum or maximum expiration date it so chose and that is precisely what is happen with TDCJ's parole system. TDCJ is awarding GOOD CONDUCT TIME in the form of PAROLE TIME CREDITS but are arbitrarily refusing to calculate a minimum and maximum expiration date with the PAROLE TIME CREDITS for sentences of 60 to 99 years or life even though the law requires the PAROLE TIME CREDITS to be computed as calendar time. See Art.42.18,§ 8(a), again.

REASONS FOR GRANTING THE PETITION

The Constitution guarantees that people incarcerated in jails and prisons may not be detained beyond their release dates, and it is the fundamental duty of the State to ensure that all people in its custody are released on time.

Incarceration is a part of the justice system, but it needs to be done correctly. Persons are legally incarcerated every day in America and are ordered by the court to serve certain sentences primarily for punishment, deterrence and rehabilitation purposes. This ultimately benefits the individual, society and the criminal justice system. There is an obligation both to incarcerated persons and the taxpayers not to keep someone incarcerated for longer than they should be. This can be costly from a physical and mental standpoint for the incarcerated individual and a waste of money for the taxpayer. Timely release is not only a legal obligation, but arguably of equal importance, a moral obligation.

Petitioner request that this petition be granted to ensure that TDCJ has the policy and tools going forward to accurately and morally calculate its prisoners' minimum and maximum expiration date to prevent overdetention from continuing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lester Kasser

Date: March 16, 2023