

No. #23-5849

IN THE
SUPREME COURT OF THE UNITED STATES

Bryan H. Brown, Petitioner

v.

State of New Hampshire, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
NEW HAMPSHIRE SUPREME COURT

PETITION OF REHEARING
PURSUANT TO RULE 44

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PETITION FOR REHEARING

NOW COMES the Petitioner, Bryan H. Brown, through pro se representation and respectfully prays this Honorable Court to grant a Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of New Hampshire Supreme Court; in support thereof, he states the following:

STATEMENT OF FACTS

The Petitioner is serving a twenty to forty year sentence. Roughly six years after his sentence commenced, the state enacted RSA 651-A:22-a, the "Earned Time Credit" statute. The statute is designed to provide New Hampshire inmates with an opportunity to earn up to a twenty-one month reduction in their sentence. The reduction comes in the form of earned time credits, and the credits are subject to forfeiture or denial as the result of serious misconduct. RSA 651-A:22-a, III.

As enacted, the statute mandates that after reviewing a prisoner's record, the Commissioner of Corrections "shall award" or recommend a reduction in the inmates sentence for successful completion of the recommended program. RSA 651-A:22-a, I. Conceivably, courts were given a limited role in the process, however, that role did not permit judges to nullify or substitute the Commissioner's authority in determining a prisoner's eligibility or entitlement to said credits.

Nevertheless, the Petitioner was denied approval without a hearing the benefit of earned time credits to which he was entitled to as a matter of law and right. See e.g. Wolff v. McDonnell, 418 U.S. 539 (1974).

The State Supreme Court affirmed the lower courts denial under the absurd premise that the statute afford courts "broad discretion" in denying and or granting approval for earned time credits. State v. Brown, 2023 N.H. Lexis 159 (citing State v. Jordan, 2023 N.H. Lexis 114 (decided June 29, 2023) (slip op at 5); Fiske v. Warden, N.H. State Prison, 175 N.H. 526, 528-29 (2023).

REASON MERITING REHEARING

Inexplicably, New Hampshire courts have not determine whether its earned time credit statute is mandatory or discretionary in nature or whether based on its language, New Hampshire inmates has a liberty interest in the state created right under Wolff. In Wolff, this Court held that prisoners have a liberty interest in good time credits, provided they earn the credits under an applicable state statute. *Id.* at 556-57. Once the credits are earned, they cannot be arbitrarily denied or lost without the benefit of due process protections. *Id.* at 557. This Court has also indicated that a state creates a protected liberty interest by placing substantive limitations on Official discretion Olim v. Wakinekona, 461 U.S. 238, 249 (1983), and mandating the outcome to be reached upon the relevant criteria having been met.

Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 462 (1989)(quoting Hewitt v. Helms, 459 U.S. 460, 471-72 (1983)).

In Thompson, this Court found that a liberty interest was created if the regulation contain explicitly mandatory language and its substantive predicates are present - a particular outcome must follow. *Id.* at 643 (quoting Hewitt, 459 U.S. at 472)).

Indisputably, New Hampshire earned time credit statute establishes regulatory measures that imposes substantive limitation on the exercise of discretion by using mandatory language. Arguably, neither the Commissioner of Corrections nor the courts have unlimited discretion as alluded below in three distinct respects: (first) reductions are mandated if the inmate satisfy the statutory requirements for said credits RSA 651-A:22-a,I; (second) reductions can only be earned and available to inmates in the least restrictive security classifications of general population and minimum security TSA 651-A:22-a,III; (third) reductions can only be forfeited or denied for serious misconduct or any category "A" offense listed in the department of corrections policy and procedure directives. RSA 651-A:22-a,III; see also Peters v. Wrenn, 2015 U.S. Dist. Lexis 170050 (decided December 1, 2015)(slip op at 2-3).

It would be fundamentally inconsistent with the statutory scheme of the statute to permit judges to override the Commissioner's recommendations of an inmates entitlement to credits that they have earned. At the very least, this Court should hold that New Hampshire earned time credit statute requires sentencing courts to grant approval to prisoners who satisfy the statutory requirements and obtain the Commissioner's recommendation, to rule otherwise would be the very definition of arbitrariness, and a disregard for its own legal precedent.

CONCLUSION

New Hampshire earned time credits statute unambiguously mandates that credits be awarded to inmates who satisfy the statute's requirement for said credits. To allow New Hampshire courts to arbitrarily ignore violates the Constitution.

This Court should grant a Rehearing of its judgment entered on December 11, 2023, and issue a Writ of Certiorari to hold New Hampshire accountable for failing to properly apply the law of this Court and the Petitioner relief in accordance with the law.

Respectfully submitted,

Bryan Brown

Mr. Bryan H. Brown #79721

New Hampshire State Prison
281 N. State St., P.O. Box 14
Concord, New Hampshire 03302-0014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed, on this 25 day of December, 2023, to the Office of: New Hampshire Attorney General at 33 Capitol St., Concord, New Hampshire 03301-6397.

Bryan Brown

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STATE OF NEW HAMPSHIRE, Respondent

CERTIFICATE OF GOOD FAITH

NOW COMES the Petitioner, Bryan H. Brown, filing pro se, and makes the foregoing certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44; he further states the following:

1. This Court entered its judgment denying the Petition a Writ of Certiorari on December 11, 2023. The Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay.

2. Furthermore, the Petitioner believes that based upon the law of this Court and the facts of this case, he is entitled to relief which has been unjustly denied him. He further believes that if the New Hampshire courts are continually allowed to turn a blind eye to its less-fortunate citizens liberty interests, a number of people will be denied their constitutional due process rights.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 25 day of December, 2023.

Bryan Brown

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State of New Hampshire, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
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APPENDIX TO
PETITION OF REHEARING

-Reproduced-

Brown v. New Hampshire, 2023 U.S. Lexis 4679

Supreme Court of the United States

December 11, 2023, Decided

No. 23-5849

Reporter

2023 U.S. Lexis 4679^{*} ___ S.Ct. ___ 2023 WL 8532010

Bryan H. Brown, Petitioner v. New Hampshire

Prior History: State v. Brown, 2023 N.H. Lexis 159, 2023 WL 5427952 (N.H. Aug. 23 2023).

Judges: [1^{*}] Roberts, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett, Jackson.

Opinion

Petition for writ of certiorari to the Supreme Court of New Hampshire denied.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2022-0605, State of New Hampshire v. Bryan H. Brown, the court on August 23, 2023, issued the following order:

The court has reviewed the written arguments and the limited record submitted on appeal, and has determined to resolve the case by way of this order. See Sup. Ct. R. 20(2). The defendant, Bryan H. Brown, appeals an order of the Superior Court (Howard, J.) denying his motion to award earned time credits. We affirm.

Although he does not identify the offenses which resulted in his convictions, the defendant states that he was convicted in 2006. Subsequent to his convictions, the legislature enacted RSA 651-A:22-a, the earned time credits statute, in 2014. Laws 2014, 166:1; see RSA 651-A:22-a (Supp. 2022). This statute provides to prisoners the opportunity to receive reductions in their minimum and maximum sentences upon completion of certain approved programs. In 2022, the defendant filed a motion to award earned time credits, seeking credit for certain programs that he had completed during his incarceration. The trial court denied the motion after reviewing “the motion, the State’s objection, the relevant pleadings in the underlying criminal files, and the nature and circumstances of the offenses.” Based upon its review, the trial court determined that “reduction in sentence is not appropriate in this case.” This appeal followed.

On appeal, the defendant argues that “sentencing Courts are required to grant earned time credits to those inmates who have complied with the statutory requirements of RSA 651-A:22-a and obtained the Commissioner’s recommendation for said credits.” He further contends that “[i]t would be fundamentally inconsistent with the statutory scheme to permit Judges to arbitrarily deny inmates their state created right for reasons not recognized by the statute.”

We have recently held, however, that with respect to requests for earned time credits by prisoners incarcerated before the effective date of RSA 651-A:22-a, the sentencing court has discretion to grant or deny approval of earned time credits. State v. Jordan, 176 N.H. __, __ (decided June 29, 2023) (slip op. at 5); see also Fiske v Warden, N.H. State Prison, 175 N.H. 526, 528-29 (2022) (at the time of sentencing, the court has discretion to grant or deny eligibility to obtain earned time credits to a prisoner who was sentenced on or after the effective date of the statute).

To the extent the defendant argues that it was improper for the trial court to rely upon the underlying record or that the court's decision violated his rights to due process, we have neither a sufficient record, see Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004) (burden on appealing party to provide this court with record sufficient to decide issues raised on appeal), nor sufficiently developed argument to address these issues, and we decline to do so, see White v. Auger, 171 N.H. 660, 665 (2019) (court will not address arguments that a party has not sufficiently developed in its brief). Accordingly, the decision of the trial court is affirmed.

Affirmed.

MACDONALD, C.J., and HICKS, BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Timothy A. Gudas,
Clerk**

Distribution:

Clerk, Strafford County Superior Court, 219-2006-CR-01146

Honorable Mark E. Howard

Honorable Tina L. Nadeau

✓Mr. Bryan H. Brown

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File