

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 21st day of November, 2024.

WARREN ELWOOD SHELTON, JR., No. 1174573,

PETITIONER,

against Record No. 230595

HAROLD W. CLARKE, DIRECTOR
VIRGINIA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

UPON A PETITION FOR A WRIT OF HABEAS CORPUS

Upon consideration of the petition for a writ of habeas corpus filed August 21, 2023, the rule to show cause, the respondent's motion to dismiss, and petitioner's reply, the Court is of the opinion that the motion should be granted and the petition should be dismissed.

Petitioner is in the custody of the Virginia Department of Corrections ("VDOC") serving an active sentence of fourteen years' imprisonment for distribution of a Schedule I or II controlled substance, possession of a Schedule I or II controlled substance, and obtaining money by false pretense.

In an unnumbered claim, petitioner contends the VDOC has failed to award him jail credit for the full period between his arrest and his transfer to the VDOC's custody, i.e., petitioner's "Custody Responsibility Date" ("CRD"). Petitioner asserts he was arrested on April 10, 2018, some 499 days before his August 22, 2019 CRD. However, petitioner attaches a February 7, 2021 VDOC "Legal Update" to his petition, which states the VDOC granted him jail credit for the period only from September 11, 2018 to his CRD, a period of 345 days. Petitioner claims he is entitled to jail credit for the full period from April 10, 2018, to his CRD.

The Court holds this claim is late because it was not filed within one year after the cause of action accrued. Code § 8.01-654(A)(2). The record, including the February 7, 2021 VDOC "Legal Update" detailing the VDOC's calculation of petitioner's sentence, demonstrates petitioner was informed in February 2021 that the VDOC was not providing him with jail credit for the period from April 10, 2018 to September 11, 2018. Because petitioner did not file his petition until well over a year after he was informed the VDOC was not granting him the jail credit to which he claims he is entitled, this claim is late.

In another unnumbered claim, petitioner challenges the VDOC's calculation of his Earned Sentence Credit ("ESC") under Code § 53.1-202.3.¹ He contends the VDOC has improperly calculated his release date because it has not awarded him ESC at enhanced rates under Code § 53.1-202.3(B) for the time he spent in jail between his arrest and his CRD.

The Court holds it does not have jurisdiction to consider this claim because petitioner filed his petition before the date he would be eligible for release if his claim were granted. As *Prease v. Clarke*, 302 Va. 376 (2023), explained, "this Court generally lacks jurisdiction to award habeas relief with regard to the calculation of" ESC. *Id.* at 382 n.5. Because ESC can be "forfeited" in several ways, "a challenge to the calculation of those credits will usually only result in a potential impact on the duration of confinement." *Id.* Accordingly, the Court's jurisdiction over habeas claims challenging the VDOC's calculation of a prisoner's ESC is limited to claims "filed . . . after the date [the prisoner] would have been released if he was eligible to earn" additional sentence credits. *Id.* (see also *E.C. v. Virginia Dep't of Juv. Just.*, 283 Va. 522, 527 (2012)) (explaining a circuit court had to have "subject matter or potential jurisdiction as well as active jurisdiction" to consider a habeas petition and that "[o]ur jurisprudence has long held that a court's jurisdiction is determined at the time the litigation is filed") (internal quotation marks omitted).

Here, the record, including an affidavit from Donna M. Shiflett, Manager of the VDOC's Court and Legal Services Section, and a June 10, 2024 VDOC "Summary Audit" of petitioner's sentence, demonstrates petitioner has received two and a quarter days of sentencing credit for every thirty of the 345 days he was incarcerated between September 11, 2018, and his August 22, 2019 CRD. [Accordingly, even construing petitioner's claim in the light most favorable to this Court's jurisdiction, he contends he is being wrongly denied twelve and three quarters days of ESC for every thirty days he served during that period. Code § 53.1-202.3(B)] This equates to approximately 147 days of ESC. The VDOC projects petitioner will be released on January 19, 2028, if he does not forfeit any of the ESC he has already accrued and continues to earn ESC

¹ In 2020, the General Assembly amended the statutory scheme that governs ESC. Pursuant to these amendments, under Code § 53.1-202.3(A), prisoners serving sentences for certain offenses can earn a maximum of four and a half days of ESC for every thirty days served. Under Code § 53.1-202.3(B), all other prisoners can earn up to fifteen days of ESC for every thirty days served.

at a rate of fifteen days for every thirty days served. Accordingly, when petitioner filed his petition, he was still obligated to satisfy approximately 2,400 days of his total remaining sentence. Because granting petitioner the 147 days of additional ESC to which he claims he is entitled would not, at the time he filed his petition, have satisfied this remaining sentence obligation and resulted in his release, he filed this claim too early.²

Upon further consideration whereof, petitioner's motions for default judgment and to strike the respondent's motion to dismiss are denied. Petitioner's motion to supplement is denied as moot.

Accordingly, the petition is dismissed without prejudice to the extent it challenges the VDOC's calculation of petitioner's ESC and is otherwise dismissed with prejudice. The rule is discharged.

*untimely filing
of calculation*

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

Muriel Pitney

Deputy Clerk

² Petitioner's claim was filed too early even if his untimely jail credit claim is incorporated into his ESC claim. Petitioner claims the VDOC has failed to grant him 154 days of jail credit. Assuming petitioner should receive fifteen days of ESC for every thirty days of that 154-day period, he would be entitled to 77 additional days of ESC. Incorporating those 77 additional days would bring the total ESC sought in this claim to approximately 224 days, which is still far short of the approximately 2,400 days petitioner had remaining on his sentence when he filed the petition.

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Thursday the 13th day of March, 2025.*

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WARREN ELWOOD SHELTON, JR., No. 1174573,

PETITIONER,

against Record No. 230595

HAROLD W. CLARKE, DIRECTOR
VIRGINIA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

UPON A PETITION FOR REHEARING

On consideration of the petition of the petitioner to set aside the judgment rendered
herein on November 21, 2024 and grant a rehearing thereof, the prayer of the said petition is
denied.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

Muriel Theresa Pitney

Deputy Clerk

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