

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 11th day of December, 2025.

DAVID MEYERS, No. 1039777,

PETITIONER,

against Record No. 240791

CHADWICK DOTSON, VADOC, ET AL.,

RESPONDENTS.

UPON A PETITION FOR REHEARING

On consideration of the petitioner's correspondence dated October 14, 2025, which is treated as a petition to set aside the judgment rendered herein on September 19, 2025, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

Evoing Fajalic

Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 19th day of September, 2025.

DAVID MEYERS, No. 1039777, PETITIONER,

against Record No. 240791

CHADWICK DOTSON, VADOC, ET AL., RESPONDENTS.

UPON A PETITION FOR A WRIT OF HABEAS CORPUS

Upon consideration of the petition for a writ of habeas corpus filed July 30, 2024, petitioner's three supplements,¹ the rule to show cause, the respondents' 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.²

Petitioner is an inmate in the custody of the Virginia Department of Corrections ("VDOC"), pursuant to 2014 convictions for robbery, malicious wounding, and multiple counts of abduction and use of a firearm in the commission of a felony.

In claim (A), petitioner alleges the VDOC erred in refusing to afford him the good conduct allowance ("GCA") he was entitled to as a result of a misdemeanor conviction he received on November 2, 2012, for contempt of court for which he was sentenced to ten days of active imprisonment. Petitioner claims that, because of this failure, the VDOC has miscalculated his expected release date.

The Court holds claim (A) is untimely. The record, including an affidavit from Donna M. Shiftlett, Manager of the Court and Legal Services Section for the VDOC, and an October 17, 2024 "Summary Audit" of petitioner's sentences, demonstrates that petitioner was in local custody beginning on January 31, 2012, and remained in local custody until September 9, 2014,

¹ Petitioner filed a document on November 25, 2024, that purported to be another supplement to the petition, however, petitioner failed to file a motion for leave of Court to supplement. Accordingly, this supplement is not properly before the Court.

² In 2022, this Court imposed a prefiling injunction on petitioner. Petitioner filed a motion for leave to file the current petition for habeas relief that was granted by this Court, and the petition was deemed filed on July 30, 2024.

at which time the VDOC took custody of petitioner. As a result of the misdemeanor conviction, petitioner was eligible to earn GCA at a rate of one day for each day served pursuant to Code § 53.1-116(A), and subsequently satisfied his ten-day misdemeanor sentence on February 5, 2012. Accordingly, this claim was not filed within one year of February 5, 2012, the date on which petitioner's cause of action accrued. Code § 8.01-654(A)(2).

In claims (B) through (E), petitioner alleges the VDOC has failed to properly award him earned sentence credit ("ESC") that he claims he is entitled to under Code § 53.1-202.3 for each of his multiple 2014 felony convictions. Petitioner contends the VDOC is refusing to comply with the ESC statute and this Court's ruling in *Vasquez v. Commonwealth*, 291 Va. 232 (2016), by currently disallowing him the right to earn any ESC toward his felony sentences. He further alleges the VDOC is holding him in a "separate jurisdiction" in retaliation, and this "illegal kidnapping" has allowed the VDOC to deny him ESC. Petitioner alleges he would have already been released had the VDOC properly calculated his release date to include ESC.

The Court rejects these claims. The record, including Shiftlett's affidavit, and an October 17, 2024 "Summary Audit" of petitioner's sentences, demonstrates petitioner became a "state-responsible inmate" in the custody of the VDOC on September 9, 2014 at which time he was assigned Class Level I, affording him the opportunity to earn enhanced ESC at a rate of fifteen days for every thirty days served for his eligible convictions under Code § 53.1-202.3(B), and four-and-one-half days for every thirty days served for his convictions enumerated in Code § 53.1-202.3(A).³ Subsequently, on November 10, 2015, petitioner's class level was reduced to Class Level II, and further reduced to Class Level IV on June 23, 2017. Petitioner has remained classified as a Level IV prisoner since that date. Incarcerated individuals at Class Level IV earn zero days of ESC under either Code §§ 53.1-202.3(A) or (B). Petitioner does not appear to challenge either the calculation of any ESC afforded to him when he was classified as a Level I and II prisoner, or the assignment of his Class Level; he only contends he is wrongly being denied the right to earn any ESC. He has not demonstrated he is entitled to earn any ESC as a Level IV prisoner and has not demonstrated his estimated release date of June 22, 2040, is inaccurate.

³ The Summary Audit reflects the retro-application of Code § 53.1-202.3 that became effective on July 1, 2022, and the expiration of Budget Item 404(R)(2) on July 1, 2024, affording all prisoners the ability to earn enhanced ESC under Code § 53.1-202.3(B) for any conviction not enumerated in subsection (A).

In claims (F), (G), (H), (J), unenumerated portions of the first supplemental petition filed on December 3, 2024, an unenumerated portion of the second supplemental petition filed on December 30, 2024, and unenumerated portions of the third supplemental petition filed on January 21, 2025, petitioner contends the VDOC is systematically denying him access to attend unspecified institutional proceedings against him in violation of his due process rights. Petitioner contends the VDOC and other officials are engaged in a conspiracy against him in retaliation for civil actions he has filed against numerous individuals alleging physical and sexual abuse, and kidnapping while incarcerated. Petitioner generally asserts the violation of his due process rights has resulted in the loss of ESC. In support of these claims, petitioner attached to the third supplemental petition one institutional proceeding document showing petitioner was found guilty of acting in a manner that significantly disrupts the operation of the institution and was penalized with loss of 120 days of ESC.⁴

The Court holds petitioner has failed to demonstrate the Court has jurisdiction to consider this claim and award the relief which he seeks. A prisoner in a state institution is not “wholly stripped” of their constitutional rights, including the right to due process. *See Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). While the “Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison,” when a state has “created the right and . . . recogniz[es] that its deprivation is a sanction authorized for major misconduct, the prisoner’s interest has real substance” and, accordingly, the prisoner is entitled to minimum procedures appropriate under the Due Process Clause. *Anderson v. Clarke*, 302 Va. 400, 415 (2023) (quoting *Wolff*, 418 U.S. at 557).

However, in Virginia, Code § 8.01-654(A)(1) permits a petitioner to challenge the lawfulness of his or her detention using the writ of habeas corpus only so long as “an order entered in the petitioner’s favor will result in a court order that, on its face and standing alone, will directly impact the duration of the petitioner’s confinement.” *Carroll v. Johnson*, 278 Va. 683, 693 (2009). “In other words, the mere potential to reduce the duration of confinement is not sufficient to warrant habeas relief.” *Prease v. Clarke*, 302 Va. 376, 383 n.5 (2023) (citing *Carroll*, 278 Va. at 694). Because this Court has determined it “generally lacks jurisdiction to award habeas relief with regard to the calculation of earned sentence credits,” *Prease*, 302 Va. at

⁴ There is no claim labeled claim (I) in the petition. The claims, as labeled, skip from claim (H) to claim (J).

383 n.5, except when a petitioner filed “his habeas petition *after* the date he would have been released if he was” entitled to the ESC he claims, petitioner must demonstrate that a ruling in his favor granting him the lost ESC would have a direct impact on the duration of his confinement within the meaning of Code § 8.01-654(A)(1). *See id.*; *see also E.C. v. Va. Dep’t of Juvenile Justice*, 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, petitioner raises various due process claims, alleging multiple institutional proceedings were flawed. However, construed generously, the remedy which he seeks—the return of 120 days of ESC—is not available until an order entered in his favor would have a direct impact on the duration of his confinement. Petitioner is not scheduled for release until 2040, and, accordingly, he has failed to demonstrate that an order granting him an additional 120 days of ESC would have a direct impact on the duration of his confinement.

In an unenumerated portion of the December 3, 2024 supplemental petition, petitioner contends he is currently being subjected to abuse during his confinement.

The Court rejects this claim as it does not challenge the legality of petitioner’s detention, and an order entered in petitioner’s favor will not directly impact the duration of his confinement. *See Carroll*, 278 Va. at 693-94 (stating a petitioner may challenge, in habeas, the lawfulness of the entire duration of detention “so long as an order entered in petitioner’s favor will result in a court order that, on its face and standing alone, will directly impact the duration of the petitioner’s confinement”).

In another unenumerated portion of the December 3, 2024 supplemental petition, petitioner alleges he suffered prosecutorial “indifference” to his mental health and wellbeing during trial.

The Court holds this portion of the December 3 supplemental petition is untimely. To the extent petitioner is claiming prosecutorial misconduct during his 2014 trial, petitioner failed to raise this claim within two years of his convictions. Code § 8.01-654(A)(1).

In an unenumerated portion of the December 30, 2024 supplemental petition, petitioner raises what appear to be numerous trial court errors, including various issues with witnesses’ testimonies and the trial court’s ruling on certain objections. Petitioner also appears to claim he

is actually innocent of the 2014 crimes.

The Court holds this portion of the December 30 supplemental petition is barred because these non-jurisdictional issues could have been raised at trial and on direct appeal and, thus, are not cognizable in a petition for a writ of habeas corpus. *Slayton v. Parrigan*, 215 Va. 27, 29 (1974). Furthermore, petitioner's claim that he is actually innocent is not cognizable in habeas corpus. Assertions of actual innocence are governed by Code §§ 19.2-327.1 through -327.6 and Code §§ 19.2-327.10 through -327.14, and are outside the scope of habeas corpus review, which concerns only the legality of the petitioner's detention. *Lovitt v. Warden*, 266 Va. 216, 259 (2003).

Upon further consideration whereof, petitioner's motions for the return of documents in a separately filed mandamus petition, return of "educational records," to file a "consolidated petition for rehearing," and for an emergency injunction are denied.

Accordingly, the petition is dismissed without prejudice as to claims (F), (G), (H), and (J) and unenumerated portions of the December 3, 2024 supplemental petition, an unenumerated portion of the December 30, 2024 supplemental petition, and unenumerated portions of the January 21, 2025 supplemental petition challenging the denial of his due process rights resulting in loss of ESC, dismissed as to the remaining claims, and the rule is discharged.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

A handwritten signature in black ink, appearing to be 'M. Pitney', written over a horizontal line.

Deputy Clerk