

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 3, 2025

Lyle W. Cayce
Clerk

No. 25-50321

ROSS MASSEY,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director,*
Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent—Appellee.

Application for Certificate of Appealability
The United States District Court
for the Western District of Texas
USDC No. 1:24-CV-148

ORDER:

Ross Massey, Texas prisoner #0046822, is serving a 60-year term of imprisonment on his conviction of aggravated robbery committed in August 1987. Massey, who is eligible for mandatory supervision, filed a time-credit dispute with the Texas Department of Criminal Justice (“TDCJ”); he also filed a state habeas application raising issues pertaining to the time-credit dispute. Massey seeks a certificate of appealability (“COA”) to appeal the denial of his 28 U.S.C. § 2254 application, which he filed to challenge the determination of his time credits.

As an initial matter, Massey does not renew his claim that he is entitled to administrative good-time credits based on the inmate population's exceeding 95 percent of capacity, nor does he renew his claim that he was entitled to time credits for completing on-the-job training and vocational training. Accordingly, he has abandoned those claims. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

Massey asserts that he is entitled to time credits based on his receipt of a GED, which he says he received in 2015 while being detained by the Arkansas Department of Corrections ("ADOC"). He contends that he was entitled to promotion to a higher time-earning status six months after his mandatory supervision was revoked and while he was in detention at the ADOC. He posits that his 60-year sentence has been unlawfully extended by the TDCJ and that the time credits he accrued from 1987 to 2011 were not forfeited by the revocation of his mandatory supervision.

Massey maintains that the Texas Court of Criminal Appeals lacked sufficient information to render a decision on the habeas application he filed in connection with his time-credit dispute. Finally, he avers that the district court erred by denying the claims raised in his § 2254 application by applying, to his detriment, laws that went into effect after he committed his offense, in violation of *ex post facto* principles.

To obtain a COA, Massey must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To satisfy that standard, he must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Massey has failed to make the required showing. Accordingly, his

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request for a COA is DENIED.

A handwritten signature in black ink, appearing to read "Jerry E. Smith", is written over a horizontal line.

JERRY E. SMITH

United States Circuit Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**ROSS MASSEY,
TDCJ No. 00468822,**

Petitioner,

V.

**ERIC GUERRERO, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.¹

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**A-24-CV-00148-RP**

## ORDER

Before the Court are Ross Massey's ("Petitioner") Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1), Respondent Eric Guerrero's Answer (ECF No. 7), Petitioner's Response (ECF No. 9), Respondent's Supplemental Answer (ECF No. 20) and Petitioner's Response thereto (ECF No. 22). Having reviewed the record and pleadings submitted by both parties, the Court denies Petitioner's federal habeas petition. To the extent the Antiterrorism and Effective Death Penalty Act (AEDPA) applies, Petitioner has failed to show that the state habeas court's rejection of his claims was objectively unreasonable. In addition, the Court concludes all of Petitioner's claims fail on the merits.

## **I. Background**

Petitioner was indicted for committing aggravated robbery with a deadly weapon on August 18, 1987; on November 20, 1987, a jury found him guilty of the charge and sentenced him to sixty (60) years imprisonment. (ECF No. 8-5 at 42.) On May 13, 2011, Petitioner was

<sup>1</sup> The previous named respondent in this action was Bobby Lumpkin. Eric Guerrero succeeded Lumpkin as Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Under Rule 25(d) of the Federal Rules of Civil Procedure, Guerrero is automatically substituted as a party.

released to mandatory supervision. (ECF No. 16-2 at 2-3.) On August 31, 2013, a pre-revocation warrant was executed at the Arkansas Department of Corrections (ADOC)--where Petitioner was serving a term of 84 months imprisonment for a conviction of sexual assault in the second degree (ECF No. 16-3 at 2)--and his supervision was thereafter revoked. On March 25, 2022, Petitioner was transferred to the custody of the Texas Department of Criminal Justice (TDCJ).

Petitioner alleges that, after he arrived at TDCJ, he inquired about his good time and bonus time credits and was told he would need to wait until he arrived at his assigned unit before he could submit a request to classification. (ECF No. 9 at 2.) In late June 2022, Petitioner arrived at the Coffield Unit, his assigned unit, and spoke with classification. In July 2022, Petitioner requested a time sheet; he received it on September 22, 2022, and it showed the following:

|                   |          |          |         |
|-------------------|----------|----------|---------|
| Flat Time Credit  | 32 years | 9 months | 17 days |
| Good Time Credit  | 9 years  | 0 months | 21 days |
| Bonus Time Credit | 0 years  | 1 months | 29 days |
| Work Time Credit  | 0 years  | 0 months | 0 days  |
| Total Time Credit | 42 years | 0 months | 7 days  |

(ECF No. 1-5 at 2.) Petitioner filed a time credit dispute on November 8, 2022. On March 27, 2023, TDCJ responded by stating "You are currently S3 status. Your PRD [Projected Mandatory Supervision Release Date] is 1-26-2029. There is no error in your current time calculations." (ECF No. 1-4 at 2.)

On August 13, 2023, Petitioner filed a state application for habeas corpus relief, listing the following three claims:

1. TDCJ Classification and records is in error in its calculation of Petitioner's good time and bonus time, violating the Fourteenth Amendment. Petitioner has not received the correct amount of good time and bonus time since the state of Texas revoked his mandatory release and placed a detainer on him while he was serving a sentence in the state of Arkansas. The 1987 Texas laws under which Petitioner was originally sentenced state he shall receive 5 days bonus time for OJT's, vocations, and GED. He is requesting bonus time for a mechanic trade he completed in 1999, which would total 545 days from September 1, 2013 through September 22, 2022. For the same

reasons he is requesting 545 days be added for OJT completed in 2003. Further, he completed a GED in 2015 and should receive 5 days a month in bonus time for that. He is also entitled to good time as S3 status and administrative good time anytime the TDCJ inmate population rose above 95% capacity while he was confined in ADOC.

2. TDCJ Classifications extended Petitioner's sentence by over 2 years and 3 months, which is forbidden by the separation of powers doctrine.
3. Petitioner seeks the restoration of his good time credits earned between August 18, 1987, through his release on May 13, 2011, which is 36 years and 3 months of credit.

(ECF No. 8-5 at 7-17.) The state habeas court recommended denying the application, concluding claims involving good time credits were not cognizable in habeas; further, Petitioner had forfeited all previously accrued good time credits when his mandatory supervision was revoked, and his separation-of-powers argument was meritless because it was based on his misunderstanding about his good time credits. (ECF No. 8-5 at 33-37.) On October 11, 2023, the Texas Court of Criminal Appeals (TCCA) denied Petitioner's state habeas application without written order on the findings of the trial court and on the court's independent review of the record. *Ex parte Massey*, No. WR-22,085-03 (Tex. Crim. App. Oct. 11, 2023). (ECF No. 8-6.)

Petitioner executed his federal petition for habeas corpus relief on February 1, 2024. He raises the same claims as those from his state habeas application. (ECF No. 1.) In his original answer, Respondent argued Petitioner's petition was time-barred; the Court initially agreed with Respondent and dismissed the petition and entered final judgment. However, after Petitioner moved for reconsideration, which Respondent opposed, the Court granted Petitioner's motion for reconsideration, vacating its prior order and final judgment, and reopened the case. The Court then ordered the parties to file supplemental briefing regarding Petitioner's first claim, to which both parties responded. (ECF Nos. 20, 22.)

## **II. Standard of Review**

Under 28 U.S.C. § 2254(d), a petitioner may not obtain federal habeas corpus relief on any claim that was adjudicated on the merits in state court proceedings unless the adjudication of that claim either: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. *Brown v. Payton*, 544 U.S. 133, 141 (2005). This demanding standard stops just short of imposing a complete bar on federal court re-litigation of claims already rejected in state proceedings. *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (citing *Felker v. Turpin*, 518 U.S. 651, 664 (1996)).

A federal habeas court's inquiry into unreasonableness should always be objective rather than subjective, with a focus on whether the state court's application of clearly established federal law was "objectively unreasonable" and not whether it was incorrect or erroneous. *McDaniel v. Brown*, 558 U.S. 120 (2010); *Wiggins v. Smith*, 539 U.S. 510, 520-21 (2003). Even a strong case for relief does not mean the state court's contrary conclusion was unreasonable. *Richter*, 562 U.S. at 102. A petitioner must show that the state court's decision was objectively unreasonable, not just incorrect, which is a "substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007); *Lockyer v. Andrade*, 538 U.S. 63, 75-76 (2003). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Richter*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). As a result, to obtain federal habeas relief on a claim previously adjudicated on the merits in state court, Petitioner must show that the state court's ruling "was so lacking in justification that there was an error

well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Id.* at 103. ““If this standard is difficult to meet—and it is—that is because it was meant to be.”” *Mejia v. Davis*, 906 F.3d 307, 314 (5th Cir. 2018) (quoting *Burt v. Titlow*, 571 U.S. 12, 20 (2013)).

### **III. Analysis**

#### **1. Good Time Credits While at ADOC (claim 1)**

In Petitioner’s first claim, he argues that he has not been credited with the full amount of good time credits he earned while in ADOC custody from August 13, 2013, after his pre-revocation warrant was issued, until March 25, 2022, when he was transferred to TDCJ custody. Because Petitioner is eligible for mandatory supervision, he has a protected liberty interest in his good time credits. *See Teague v. Quarterman*, 482 F.3d 769, 777 (5th Cir. 2007) (“Texas’ ... mandatory supervision scheme creates a constitutional expectancy of early release and, as such, a protected liberty interest in previously earned good-time credits.”) Petitioner argues that, under the laws in effect at the time of his conviction, he should receive five (5) days of bonus time per month incarcerated for on-the-job training (OJT) and vocational training, and for a GED he claims he earned in January 2015. He further argues that, after serving 180 days in ADOC custody, he was eligible for a time earning status upgrade. He finally argues he is entitled to administrative time for any period of his ADOC custody when TDCJ’s inmate population exceeded 95% capacity.

Respondent argues Petitioner has received all the good time credits for which he is eligible. In support, Respondent attached TDCJ Administrative Directive 4.80(IV)(B), entitled “Good Conduct Time” (hereinafter “the Directive”), to his supplemental response. (ECF No. 20-1 at 2.) The Directive defines good conduct time as follows:

“Good Conduct Time” includes time credited to an inmate for good behavior (time earning status) and for participating in work, treatment, educational, or vocational programs (sub-class A, B, and C credits or diligent participation credits). The amount of good conduct time an inmate accrues is based on the controlling offense date, the inmate’s time earning status, and participation in specified programs. For offenses committed prior to August 29, 1977, good conduct time is treated as “commutation time” and is deducted from the inmate’s prison term. For offenses committed on or after August 29, 1977, good conduct time applies only to eligibility for parole or mandatory supervision and does not affect an inmate’s prison term. Good conduct time is neither a constitutional right nor entitlement, but simply a privilege.

(*Id.* at 3.) Under the Directive, Petitioner is categorized as a “Pre-70th Legislature Inmate” because his offense was committed after August 29, 1977 and before September 1, 1987. (*Id.*)

Pre-70th Legislature inmates accrue good conduct time based on time-earning status as follows:

1. Line Class III – Accrues no good conduct time;
2. Line Class II – Accrues 10 days good conduct time per 30 days served;
3. Line Class I – Accrues 20 days good conduct time per 30 days served;
4. SAT IV – Accrues 40 good days good conduct time per 30 days served; and
5. SAT III, II – Accrues 45 days good conduct time per 30 days served.

(*Id.* at 4.) Pre-70th Legislature Inmates are also eligible for good conduct time “for the successful completion of a TDCJ-sponsored education or vocational program. Good conduct time may be earned by completing a training program, a program of academic education, such as a high school diploma, General Education Development (GED) certificate, associate or bachelor’s degree, or an on-the-job (OJT) program.” (*Id.* at 5.) This program is divided into Sub-Class A, B, and C and inmates who participate earn credits as follows:

| Sub-Class A                                                                                          | Sub-Class B                                                                                                                                                                               | Sub-Class C                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 days per month upon completion of:<br>(1) OJT Certification; or<br>(2) Vocational Training Program | 10 days per month upon completion of:<br>(1) Educational Program;<br>(2) Vocational Training Program and Educational Program; or<br>(3) OJT Certification and Vocational Training Program | 15 days per month upon completion of:<br>(1) OJT Certification and Educational Program; or<br>(2) OJT Certification, Educational Program, and Vocational Program |

(*Id.*) Further, based on the Directive, Pre-70th Legislature inmates receive “a one-time bonus award of 60 days of good conduct time ... upon completion of one or more of the above named programs” and “[b]onus credits are not subject to forfeiture by disciplinary, statutory or other causes.” (*Id.* at 5-6.) Finally, the Directive states that Pre-70th Legislature inmates “returned to TDCJ custody for parole or mandatory supervision shall be placed in Line Class I status retroactive to the date the pre-revocation warrant was executed and all prior earned good conduct time is forfeited.” (*Id.* at 10.)

Charley Valdez, Program Supervisor V for Classification and Records at TDCJ-CID, attested that Petitioner began to earn TDCJ good conduct time as a Line Class I Sub-Class B when his pre-revocation arrest warrant was executed on August 31, 2013. Petitioner was then promoted to SAT III Sub-Class B on September 21, 2022, and remains at that time-earning status. Valdez attested that, as of November 18, 2024, Petitioner had earned thirteen (13) years and five days of good conduct time, along with the one-time bonus credit of sixty (60) days that cannot be forfeited. Petitioner currently has a total of 48 years, 1 month, and 18 days with a projected mandatory supervision release date of January 26, 2029, and a maximum discharge date of December 5, 2049. Finally, with regard to earning administrative good time whenever TDCJ reached an occupancy level of 95%, Valdez attested that, based on Petitioner’s conviction, Petitioner was never eligible for this administrative good time credit. (ECF No. 20-2 at 5-6.)

In response, Petitioner argues he should be earning Sub-Class C credits because he passed his GED examination on January 20, 2015 while in ADOC custody. He attached a copy of his test results to his petition and his high school diploma to his supplemental reply. (ECF Nos. 1-6 at 2, 22 at 24.) Petitioner further argues that his time-earning class should have been adjusted to SAT III six months after he was in ADOC custody, i.e., March 1, 2014, when he was

eligible for a time earning status upgrade. Finally, Petitioner argues he is eligible for the administrative good time credits dispersed whenever TDCJ occupancy is at or over 95%. The Court will address each argument below.

*a. GED*

Petitioner argues he is entitled to Sub-Class C credits, i.e. an additional fifteen days per month, because he completed his GED while in ADOC custody on January 20, 2015. Respondent argues Petitioner's allegations are conclusory because the GED test results are uncertified and stamped throughout with the word "VOID." Respondent further argues that subclass A, B, and C credits are awarded only for the completion of TDCJ-sponsored programs. In reply, Petitioner attached a copy of an Arkansas High School Diploma. (ECF No. 22 at 24.)

First, the Court concludes it is unclear from the record that TDCJ only credits "TDCJ-sponsored programs" when deciding which Sub-Class an inmate falls under. The Directive notes that good conduct time can be earned via a GED certificate or "associate or bachelor's degree." However, review of the TDCJ Offender Orientation Handbook<sup>2</sup> ("the Handbook") makes no mention of a TDCJ-sponsored college degree.<sup>3</sup> Regardless, two things are apparent from the record before the Court. First, Petitioner failed to provide his GED test results and high school diploma to TDCJ in his time credit dispute. While the GED test results state that Petitioner took the test on January 20, 2015, the date on that document and on Petitioner's high school diploma is January 18, 2023. It therefore appears Petitioner did not receive his high school diploma until a little over a year ago and over two months after he filed his time credit dispute on November 8, 2022. Thus, it appears to the Court that TDCJ has not had an opportunity to consider whether

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<sup>2</sup> See TEX. DEP'T OF CRIMINAL JUSTICE OFFENDER ORIENTATION HANDBOOK 45 (Feb. 2017), *available at* [https://www.tdcj.texas.gov/documents/Offender\\_Orientation\\_Handbook\\_English.pdf](https://www.tdcj.texas.gov/documents/Offender_Orientation_Handbook_English.pdf) (currently unavailable).

<sup>3</sup> Although the Handbook is not in either party's pleadings, the Court may take judicial notice of a state's website. *Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005).

Petitioner earned credits based on his Arkansas GED and high school diploma. As a result, the record does not support Petitioner's claim that he should be awarded these credits starting from January 20, 2015. This claim is therefore denied.<sup>4</sup>

*b. Time Earning Status*

Petitioner next argues TDCJ is withholding good time credits he earned during his custody in ADOC based on his time-earning status. Specifically, Petitioner argues he was eligible for a promotion to the time-earning status of SAT III six months after he entered ADOC and should therefore receive an extra fifteen days (15) days of good time per month starting March 1, 2014.

Pursuant to the Directive, Pre-70th Legislature inmates "returned to TDCJ custody for parole or mandatory supervision shall be placed in Line Class I status retroactive to the date the pre-revocation warrant was executed and all prior earned good conduct time is forfeited." (ECF No. 20-1 at 10.) The Directive further states that newly-admitted inmates "shall wait six months from admission to TDCJ prior to being eligible for promotion in time-earning class." (*Id.*)<sup>5</sup> Further, the Handbook states "[o]ffenders returned to the TDCJ for parole or mandatory supervision violations, whether those violations are for technical violations or new offenses, shall not receive credit for past good conduct time. They start earning new good conduct time from the date of re-arrest. Violators back in the TDCJ shall be assigned to Line Class I status regardless of their previous status." The Handbook does not state how offenders in the custody of another correctional facility become eligible for a promotion in their time-earning status, if at all.

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<sup>4</sup> The Court does not decide whether Petitioner should be awarded GED credits starting on January 18, 2023, the date his high school diploma was issued, as this claim was not presented in Petitioner's federal habeas petition.

<sup>5</sup> The Handbook goes on to say, "They shall be automatically promoted if they do not have any major disciplinary cases during this time period." See TEX. DEP'T OF CRIMINAL JUSTICE OFFENDER ORIENTATION HANDBOOK 8 (Feb. 2017), *available at* [https://www.tdcj.texas.gov/documents/Offender\\_Orientation\\_Handbook\\_English.pdf](https://www.tdcj.texas.gov/documents/Offender_Orientation_Handbook_English.pdf) (currently unavailable).

Petitioner appears to argue that, because he was in the constructive custody of TDCJ while serving time in the ADOC, he was eligible for a line status promotion six months after his ADOC incarceration commenced. He relies on a variety of cases, including *Ex parte Williams*, 551 S.W.2d 416 (Tex. Crim. App. 1977) and *Ex parte Jasper*, 538 S.W.2d 782 (Tex. Crim. App. 1976), to support his argument that TDCJ should have promoted his time earning status while he was in the ADOC's custody. But these cases do not support that conclusion; at most, they hold that inmates held in the custody of another correctional system while on detainer from TDCJ are eligible for good conduct time. Petitioner has received good conduct time from TDCJ during his custody in ADOC—based on Charley Valdez's affidavit, he received 30 days of good conduct time for every month served at ADOC. Petitioner provides no evidence that TDCJ was required to promote his time-earning status six months into his ADOC incarceration. His allegations to the contrary are therefore conclusory and cannot support this Court granting him habeas relief on this claim. *See Ross v. Estelle*, 694 F.2d 1008, 1012 (5th Cir. 1983) (“conclusory allegations do not raise a constitutional issue in a habeas proceeding”). This claim is therefore denied.

*c. Administrative Good Time Credits*

In Petitioner's final claim regarding his good conduct time, he argues he should receive administrative good time credits whenever the TDCJ population exceeds 95% of occupancy. Respondent argues that Petitioner is not eligible for this administrative credit.

Under the version of the Texas Prison Management Act in force when Petitioner committed his crime, “[i]f the inmate population of the department reaches and remains at 95 percent or more of capacity for five consecutive days or reaches 95 percent of capacity for 20 days in a 30-day period, the director shall immediately notify the governor in writing of that fact and credit 30 days of administrative good conduct time to any inmate who: (1) is classified as a

trustee or a Class I inmate by the department; and (2) is not serving a sentence for an offense listed in Subdivision (1) of Subsection (a) of Section 3g of Article 42.12, Code of Criminal Procedure, or whose judgment does not contain an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article.” See Texas Prison Management Act, art. 6184o §2(b), added by Acts 1983, 68th Leg., p. 979, ch. 233, § 1, eff. Aug. 29, 1983 (amended 1986). Section 3g(a)(1)(D) of Article 42.12 in the Code of Criminal Procedure lists aggravated robbery and section 3g(a)(2) describes the affirmative finding of use or exhibiting a deadly weapon. Code of Criminal Procedure, art. 42.12, Acts 1985, 69th Leg., Ch. 427, § 1. Petitioner’s judgment of conviction shows that he was convicted of aggravated robbery with an affirmative finding for use of a deadly weapon. (ECF No. 8-5 at 42.) Accordingly, Petitioner is not eligible for these administrative good time credits and this claim is denied.

## 2. Extended Sentence (claim 2)

Petitioner next argues that TDCJ is violating his Fifth and Fourteenth Amendment rights by extending his sentence by two years and three months. He argues his 60-year sentence began in August 1987 and thus should be discharged by August 2047 at the latest. However, TDCJ is now showing a discharge date of December 2049, which he argues is unconstitutional.

In his affidavit, Charley Valdez states that, based on Petitioner’s conviction of aggravated robbery, he is not entitled to receive street-time credit after his mandatory supervision was revoked, citing Texas Government Code § 508.023(b) and *Ex parte Hernandez*, 275 S.W.3d 895, 898 (Tex. Crim. App. 2009). (ECF No. 20-2 at 4.) Petitioner responds that the statute was created in 1997 and therefore does not apply to his 1987 conviction.

Article 42.18, section 15 of the Texas Code of Criminal Procedure in force at the time of Petitioner’s conviction reads as follows: “When a person’s parole, mandatory supervision, or

conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remain to be calculated without credit for the time from the date of his release to the date of his revocation.” *See* Code of Criminal Procedure, art. 42.18, Acts 1985, 69th Leg., ch. 427, § 2, eff. Sept. 1, 1985. Accordingly, Petitioner has failed to show he is entitled to street time credit for the period he was on mandatory supervision and therefore cannot show TDCJ is violating his constitutional rights by not giving him this credit. This claim is denied.

### 3. Good Time Credits From 1987-2011

In Petitioner’s final claim, he argues he is entitled to the good time credits he earned prior to being released on mandatory supervision. Mr. Valdez attests that, pursuant to Texas Government Code § 498.004(b), Petitioner forfeited his previously accrued good time when his mandatory supervision was revoked. (ECF No. 20-2 at 4.) Again, Petitioner argues this statute does not apply to his 1987 offense.

At the time of Petitioner’s conviction, the law regarding good conduct time earned and forfeited due to mandatory supervision was as follows:

Sec. 4. Good conduct time applies only to eligibility for parole or mandatory supervision as provided in Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, and shall not otherwise affect the inmate’s term. Good conduct time is a privilege and not a right. ... Upon revocation of parole or mandatory supervision, the inmate loses all good conduct time previously accrued, but upon return to the department may accrue new good conduct time for subsequent time served in the department. The director may, however, restore good conduct time forfeited upon revocations *not involving new criminal convictions* after an inmate has served a reasonable period of good behavior in the department, to be no less than three months, subject to rules and policies promulgated by the department. Within 60 days after the inmate’s return to the department, the Board of Pardons and Paroles shall notify the director of the grounds for revocation.

Acts 1977, 65th Leg., p. 932, ch. 347, § 3, eff. Aug. 29, 1977 (amended by Acts 1985, 69th Leg., ch. 835, § 1, eff. Aug. 26, 1985) (emphasis added).

The law in effect at the time of Petitioner's conviction stated that inmates lose their previously earned good conduct time when their mandatory supervision is revoked, but that such time may be restored if the revocation did not involve a new criminal conviction. Petitioner's mandatory supervision was revoked because he was convicted of sexual assault in the second degree in Arkansas. Accordingly, based on the law in effect at the time of Petitioner's conviction, he lost his good conduct time when his mandatory supervision was revoked and was not eligible to have it restored. This claim is denied.

#### **V. Certificate of Appealability**

A petitioner may not appeal a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the district court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to the applicant. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003) (citing 28 U.S.C. § 2253(c)(1)).

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). In cases where a district court rejects a petitioner's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a district court rejects a habeas petition on procedural grounds without reaching the constitutional claims, "a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

In this case, reasonable jurists could not debate the dismissal or denial of Petitioner's § 2254 petition on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El*, 537 U.S. at 327 (citing *Slack*, 529 U.S. at 484). Accordingly, the Court will not issue a certificate of appealability.

It is therefore **ORDERED** that Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DENIED**; and

It is finally **ORDERED** that a certificate of appealability shall not issue in this case.

**SIGNED** this 13th day of March, 2025.

A handwritten signature in black ink, appearing to read 'R. Pitman', with a long horizontal stroke extending to the right.

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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 20, 2026

Lyle W. Cayce  
Clerk

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No. 25-50321

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ROSS MASSEY,

*Petitioner—Appellant,*

*versus*

ERIC GUERRERO, *Director, Texas Department of Criminal Justice,*  
*Correctional Institutions Division,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:24-CV-148

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ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before SMITH, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R. 40 I.O.P.), the motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.