

APPENDIX A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 07, 2025

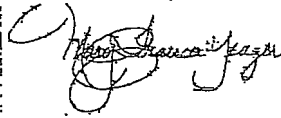
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-10484 Gutierrez v. Guerrero
USDC No. 5:22-CV-84

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Ernesto Gutierrez
Ms. Susan Frances San Miguel
Mr. Nathan Tadema

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 25-10484

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2025

Lyle W. Cayce
Clerk

ERNESTO GUTIERREZ,

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 Northern District of Texas
USDC No. 5:22-CV-84

ORDER:

Ernesto Gutierrez, who is serving a life sentence in Texas, seeks a certificate of appealability to appeal the dismissal of his 28 U.S.C. § 2254 application challenging the Texas parole board's refusal to grant release to mandatory supervision. Gutierrez first challenges the district court's determination that his § 2254 application was time-barred, contending that his claim did not become ripe until 2021, when he discovered he had accrued 60 years of time credits and when he received a copy of the habeas application filed in *Ex parte Franks*, 71 S.W.3d 327 (Tex. Crim. App. 2001). He also

No. 25-10484

challenges the district court's alternative determination that his claim is foreclosed by circuit precedent, arguing that: (1) the Texas legislature did not exclude life sentences from mandatory supervision release; (2) he was entitled to mandatory supervision release after his calendar time and good time credit reached 60 years; (3) *Franks* and *Arnold v. Cockrell*, 306 F.3d 277 (5th Cir. 2002), were wrongly decided; and (4) he has a constitutionally protected liberty interest in his mandatory supervision release.

To obtain a certificate of appealability, Gutierrez 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, 483-84 (2000). When, as here, the district court denies relief on procedural grounds and, in the alternative, on the merits, the movant "must show *both* that jurists of reason could debate the validity of the procedural . . . ruling *and* that those same jurists could debate the validity of the merits ruling." *Cardenas v. Stephens*, 820 F.3d 197, 201 (5th Cir. 2016) (emphasis in original).

Gutierrez has not made the requisite showing. In *Arnold*, this court held that because a life-sentenced inmate is ineligible for release under the Texas mandatory supervision statute, such an inmate does not have a constitutionally protected interest in release and therefore is not entitled to habeas relief. 306 F.3d at 279. *Arnold*'s holding is clear and binding, meaning that jurists of reason could not debate the validity of the district court's merits denial of Gutierrez's § 2254 application.

Accordingly, his motion for a certificate of appealability is DENIED.

/s/ Jennifer Walker Elrod
JENNIFER WALKER ELROD
Chief Judge

APPENDIX B-
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

ERNESTO GUTIERREZ,

Petitioner,

v.

No. 5:22-CV-00084-H

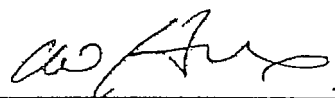
DIRECTOR, TDCJ-CID,

Respondent.

JUDGMENT

For the reasons stated in the Court's order entered today, it is ordered, adjudged, and decreed that this petition for writ of habeas corpus is dismissed with prejudice.

Dated March 18, 2025.



JAMES WESLEY HENDRIX
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

ERNESTO GUTIERREZ,

Petitioner,

v.

No. 5:22-CV-00084-H

DIRECTOR, TDCJ-CID,

Respondent.

OPINION AND ORDER

Petitioner Ernesto Gutierrez, a self-represented state prisoner, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his ineligibility for mandatory supervision in light of his capital murder conviction and life sentence. Respondent filed an answer with copies of Petitioner's relevant state-court records, arguing that the petition is untimely and, alternatively, that he has failed to state a claim for which federal habeas relief is available. Dkt. Nos. 9, 11. Petitioner filed a reply, arguing that the limitation period does not apply to his case, that his petition should be deemed timely, and that his claim has merit. Dkt. No. 12. As explained below, the Court concludes that the petition is untimely and without merit.

1. Background

A Lubbock County jury found Petitioner guilty of capital murder on October 29, 1981, in cause no. 23,293 in the 137th Judicial District Court. Petitioner was sentenced to life imprisonment. Petitioner does not challenge his conviction here. Instead, he challenges the Parole Board's refusal to release him to mandatory supervision.

Petitioner filed a relevant state application for writ of habeas corpus on November 23, 2021, but the Texas Court of Criminal Appeals (TCCA) denied it on March

9, 2022 without written order on the findings of the trial court without a hearing and on the court's independent review of the record.

Petitioner filed this federal petition on May 1, 2022.¹ He raises a single ground for relief—that the Texas Parole Board has refused to release him to mandatory supervision in violation of his due process rights and legislative intent. Dkt. No. 1.

Respondent argues that the Court should deny Petitioner's claims and dismiss the petition with prejudice because it is barred by the applicable statute of limitations.

Additionally, Respondent argues that under a literal reading of the applicable mandatory supervision law and pursuant to binding Fifth Circuit precedent, Petitioner is not eligible for release because his time served and accrued good-conduct time will never add up to life.

Thus, Respondent contends that Petitioner has no liberty interest in early release, and his petition must be denied.

2. Discussion

The Court has reviewed Petitioner's pleadings, Respondent's answer, and the state court records submitted by Respondent. The Court finds that an evidentiary hearing is not necessary to resolve the instant petition. See *Young v. Herring*, 938 F.2d 543, 560 n.12 (5th Cir. 1991) (explaining that "a petitioner need not receive an evidentiary hearing if it would not develop material facts relevant to the constitutionality of his conviction").

¹ See *Spotville v. Cain*, 149 F.3d 374, 378 (5th Cir. 1998) (providing that a prisoner's habeas petition is deemed to be filed when he delivers the papers to prison authorities for mailing).

A. Petitioner's claims are time-barred.

i. Statute of Limitations

Petitioner's petition is subject to review under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).² AEDPA establishes a one-year limitation on filing federal habeas corpus petitions. Specifically, 28 U.S.C. § 2244(d) provides:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to a judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

In "rare and exceptional circumstances," the doctrine of equitable tolling may preserve a Petitioner's claims when the strict application of the statute of limitations would be inequitable. *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998); *Larry v. Dretke*, 361 F.3d 890, 896-97 (5th Cir. 2004). Equitable tolling does not apply when an applicant has "failed

² Petitioner's claim that AEDPA does not apply to his case because he was convicted of capital murder is wrong. AEDPA applies to both capital and noncapital cases. See *Lindh v. Murphy*, 521 U.S. 320 (1997) (finding that AEDPA's new provisions for capital cases expressly applied to then-pending cases, but the statute's amended provisions for noncapital cases only applies to habeas petitions filed after the statute's effective date). Petitioner's federal petition was filed well after AEDPA's 1996 effective date.

to diligently pursue his rights." *Larry*, 361 F.3d at 897. Additionally, the Petitioner must show that "some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Fla.*, 560 U.S. 631, 649 (2010).

ii. Discussion

Respondent argues that Petitioner could have discovered the factual predicate for his claim—his statutory ineligibility for release on mandatory supervision—on the date he was sentenced in 1981. In that case, his federal petition would have been due one year after the effective date of AEDPA—on April 24, 1997. Alternatively, Respondent contends that the Court could calculate the limitation period from the TCCA's decision in *Ex parte Franks*, 71 S.W.3d 327 (Tex.Crim.App. 2001), when the state high court clarified that inmates serving life sentences are not eligible for release to mandatory supervision. Then, Petitioner's federal petition would have been due, at the latest, by December 19, 2002. Either way, Petitioner's petition was filed about twenty years too late.

Petitioner contends that his claim was not ripe until he accrued 60 years' of time credits, which he asserts is the appropriate numerical value assigned to life sentences, so he could not have filed his petition in 2002 or earlier. Additionally, he claims that he did not receive a copy of the habeas application at issue in *Franks* until April 2021.³ So, he contends that the Court should calculate the limitation period from a factual predicate in 2021 and deem his petition timely.

Petitioner's arguments miss the mark. Over twenty years ago, the TCCA rejected the notion that a life sentence must be assigned a numerical value. *Franks*, 71 S.W.3d at 328. So, no matter how much time credit Petitioner accrued, he would not be eligible for

³ He does not claim that the TCCA's opinion was unavailable to him for twenty years—only that he could not obtain a copy of the writ application from that case.

mandatory supervision under the plain language of the statute. *Id.* And the Fifth Circuit has deferred to the Texas high court's interpretation of that state law. *Arnold v. Cockrell*, 306 F.3d 277, 279 (5th Cir. 2002). Thus, Petitioner's federal habeas petition was due, at the latest, in December 2002. Because his petition was filed almost two decades too late, the Court dismisses it as untimely.

Alternatively, even if Petitioner's claims were timely, they are foreclosed by precedent. As the Fifth Circuit recognized, because Petitioner is not eligible for release, he does not have a constitutionally protected liberty interest in mandatory supervision. In short, Petitioner has failed to show that the state-court's adjudication of his claims resulted in a decision contrary to clearly established federal law or resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254(d). Thus, his habeas claims are without merit and must be denied.

3. Conclusion

For the reasons discussed above and based on the facts and law set forth in Respondent's answer, the Court finds Petitioner's claims should be denied.

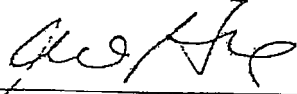
The Court therefore orders:

- (1) The petition for writ of habeas corpus is denied and dismissed with prejudice.
- (2) All relief not granted is denied, and any pending motions are denied.
- (3) Under Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability should be denied. For the reasons set forth above and in Respondent's answer, Petitioner has failed to show that reasonable jurists would find (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the

denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court will enter judgment accordingly.

Dated March 18, 2025.



JAMES WESLEY HENDRIX
United States District Judge

APPENDIX C

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 20, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-10484 Gutierrez v. Guerrero
USDC No. 5:22-CV-84

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Renee Mc Donough
By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

Mr. Ernesto Gutierrez
Ms. Karen S. Mitchell
Ms. Susan Frances San Miguel
Mr. Nathan Tadema

APPENDIX C

United States Court of Appeals
for the Fifth Circuit

No. 25-10484

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2025

ERNESTO GUTIERREZ,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

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

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:22-CV-84

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before ELROD, *Chief Judge*, and JONES and HIGGINSON, *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.

PRISONERS—SUPERVISION AND RELEASE

CHAPTER 347

S. B. No. 152

An Act relating to eligibility for and conditions, revocations, and administration of probation, parole, mandatory supervision, work furloughs, conditional pardons, emergency reprieves or furloughs, and other types of prisoner supervision and release from incarceration; amending Article 42.12, Code of Criminal Procedure, 1965, as amended, by amending Sections 1, 2, 12, 13, Subsections (a), (e), and (i) of Section 14A, Sections 15, 20, 21, 22, 24, 26, 27, 28, 30, and 31, and by adding Section 3f; adding Article 6181—1 to Title 108, Revised Civil Statutes of Texas, 1925, as amended; amending Section 26, Chapter 212, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 6166z1, Vernon's Texas Civil Statutes); amending Sections 1 and 6, Chapter 493, Acts of the 61st Legislature, Regular Session, 1969 (Article 6166x—3, Vernon's Texas Civil Statutes); repealing Article 48.05, Code of Criminal Procedure, 1965; repealing Section 23, Chapter 212, Acts of the 40th Legislature, Regular Session, 1927 (Article 6166v, Vernon's Texas Civil Statutes); and repealing Chapter 361, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 61841, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

Section 1. Article 42.12, Code of Criminal Procedure, 1965, as amended, is amended by amending³² Sections 1, 2, 12, 13, 15, 20, 21, 22, 24, 26, 27, 28, 30, and 31, and by adding³³ Section 3f to read as follows:

"Section 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the responsible agency of State government to recommend determination of paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

"Sec. 2. This Article may be cited as the 'Adult Probation, Parole, and Mandatory Supervision Law'.

"Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

"a. 'Courts' shall mean the courts of record having original criminal jurisdiction;

32. Vernon's Ann.C.C.P. art. 42.12, §§ 1, 2, 3. 33. Vernon's Ann.C.C.P. art. 42.12, § 3f.
2, 15, 15, 20 to 22, 24, 26 to 28, 30, 31.

judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days."

"Sec. 12. The Board of Pardons and Paroles created by Article 4, Section 11 of the Constitution of this State, shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections, the conditions of parole and mandatory supervision, and may recommend the revocation of releases to mandatory supervision, paroles, and conditional pardons by the Governor. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

"Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The members of the Board shall elect one of their number as chairman, who shall serve for a period of two years and until his successor is elected and qualified.

"The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

"The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

"The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

"All minutes of the Board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times."

"Sec. 15. (a) The Board is authorized to release on parole, with the approval of the Governor, any person confined in any penal or correctional institution of this State who is eligible for parole under Subsection (b) of this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

"(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Section 3f(a) (1) of this Article or if the judgment contains an affirmative finding under Section 3f(a)(2) of this Article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-third of the maximum sentence imposed or 20 years, whichever is less.

"(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A

Exhibit B, pg 2

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 GALVESTON DIVISION

United States Courts
 Southern District of Texas
 ENTERED

FEB 13 2001

Michael N. Milby, Clerk

ROBERT E. FEE

VS.

GARY L. JOHNSON, DIRECTOR OF
 TDCJ-ID§
§
§
§
§
§

CIVIL ACTION NO. G-01-084

REPORT AND RECOMMENDATION

Before the Court, pursuant to the standing referral in all cases of this nature, is a Petition for Writ of Habeas Corpus filed by Petitioner on or around January 29, 2000.

Having undertaken a preliminary review of this file under Rule 4 of the Rules Governing Section 2254 Cases, this Court shall now make the following Report and Recommendation to the District Judge.

Discussion

The Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. §§ 2241, 2254. The State has custody of Petitioner due to a judgment of conviction in Cause No. 36,465-83 from the 122nd Judicial District Court of Galveston County, Texas, where Petitioner was convicted of the offense of murder and sentenced to life in prison on or around May 12, 1980.

Since his claim in the instant case concerns the manner in which his sentence is being executed and not his original conviction, the history of his state court appeals is irrelevant. The attachments to the petition suggest that Petitioner has exhausted his state court remedies with respect to the grounds for relief presented in the instant petition.

Petitioner's asserted grounds for relief are that he is being denied due process and equal protection of the laws because TDCJ-ID and the Texas Board of Pardons and Paroles have failed to calculate a specific mandatory supervision release date for him on his life sentence, but that individuals whose sentences are for a specific number of years regularly receive their mandatory supervision release dates.

This Court agrees with Petitioner that his life sentence is, for purposes of calculating release eligibility, a sentence of sixty years. The Court also agrees that Petitioner was eligible for mandatory supervision release when he was sentenced in 1980, and under Article 42.12, §15(c) of the Texas Code of Criminal Procedure (Vernon 1977), he is entitled to be released to mandatory supervision when his calendar time plus accrued good time equal the maximum term to which he was sentenced, which as already stated, is sixty years.

Exhibit C to the petition indicates that Petitioner can obtain information from the prison authorities to calculate an outside date for his release to mandatory supervision, given the calculations of the different time credits. As far as the claimed obligation to provide Petitioner a specific mandatory supervision release date is concerned, however, common sense suggests that this date will fluctuate with changes in accrued good time.

In order to be entitled to the protection of procedural due process, one must first possess a protectible liberty interest, the contours of which are defined by state law. *Board of Pardons v.*

Allen, 482 U.S. 369, 371-72 (1987). While there is a constitutional expectancy of early release created by the mandatory supervision release scheme in place in Texas prior to September 1, 1996, *Malchi v. Thaler*, 211 F.3d 953, 957 (5th Cir. 2000), Petitioner has not shown a constitutional right to the calculation of a mandatory supervision release date.

Since Petitioner does not have the necessary underlying protectible liberty interest in the calculation of a mandatory supervision release date, his due process claim fails as a matter of law.

Nor can this Court see an equal protection problem in this regard because Petitioner has not shown that he is being treated differently with respect to the aforementioned mandatory supervision release scheme, a showing that is essential to an equal protection claim. *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996). In other words, if all who received a life sentence for the offense of murder in 1980 are being treated similarly under the law, there is no violation of the Equal Protection Clause.

Petitioner has attached Exhibit C to the petition in order to show that an individual with a sentence of fifty years has been assigned a certain discharge date. Also part of Exhibit C is an unauthenticated copy of a memorandum, pertaining to an inmate other than Petitioner, who may have received a life sentence for an offense for which he would not have been eligible for release to mandatory supervision under the sentencing scheme in place at the

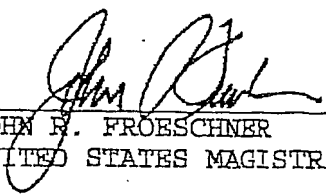
time that he was sentenced, informing the individual that life sentences are ~~not~~ eligible for mandatory supervision release. The fact that the ~~memorandum~~ was not addressed to Petitioner and thus did not address his specific situation greatly detracts from its probative value. Without knowing more about the respective situations of the individuals to whom these two pieces of paper pertain, Exhibit C does not demonstrate a violation of the right to equal protection, although this Court is somewhat troubled by the sweeping language in the alleged memorandum regarding life sentences:

One final and salient point must be made. Exhibit D reveals that Petitioner has approximately twenty-one years of flat time credit. In the opinion of this Court, unless he has over thirty-nine years of accumulated good time credits, the instant petition is premature since the hallmark of habeas relief is the entitlement to immediate release.

For the foregoing reasons, this Court RECOMMENDS that the instant case be SUMMARILY DISMISSED.

The Clerk shall send copies of this Report and Recommendation to Petitioner who shall have ten (10) days from receipt thereof to file written objections thereto, pursuant to General Order 80-5. Failure to file written objections within the prescribed time shall bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

~~DONE~~ at Galveston, Texas, this 12th day of February, 2001.



JOHN R. FROESCHNER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C PAGE 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

United States Court
Southern District of Texas
ENTERED

MAR 07 2001

Michael N. Milby, Clerk of Court

ROBERT E. FEE

VS.

GARY L. JOHNSON, DIRECTOR

§
§
§
§
§

CIVIL ACTION NO. G-01-084

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge that was entered on February 13, 2001, to which Petitioner filed his Objection on February 26, 2001, after having been granted an enlargement of time in which to do so.

In the Objection, Petitioner protests that if this Court does not order Respondent to calculate a specific date for his release on mandatory supervision, he will be held in prison beyond his actual mandatory supervision release date. He has also attached Exhibits 1 and 2 in an effort to provide support for his contention that certain prisoners serving life sentences are being treated as if they are ineligible for mandatory supervision release. This Court has reviewed the Exhibits and is troubled, as was the Magistrate Judge, by what seems to be the incorrect conclusion of TDCJ officials that certain prisoners are not eligible for release on mandatory supervision when it appears that the statute in effect at the time of their offenses permitted such release.

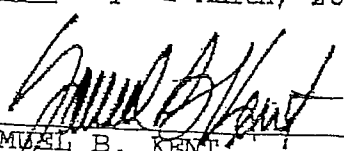
This Court is hopeful that this matter can be addressed administratively and without judicial intervention by way of bringing these concerns to the attention of the appropriate

authorities, such as the Texas Board of Pardons and Paroles. At present, however, Petitioner has not demonstrated the right to immediate release under the appropriate formula, and, as such, the instant case does not appear to have ripened into a "definite and concrete controversy" that is necessary for the adjudication of a claim. See *Travis Dale Gray v. Gary L. Johnson*, No. 97-41492 (5th Cir. April 13, 1998). Thus, it has been prematurely filed.

Having given this matter de novo review under 28 U.S.C. §636(b)(1)(C), this Court is of the opinion that the Report and Recommendation should be, and it is hereby, ACCEPTED.

Accordingly, it is ORDERED that the instant case is SUMMARILY DISMISSED for the reasons stated above.

DONE at Galveston, Texas, this 6 day of March, 2001.



SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE

EXHIBIT D

PAGE 4

CORNELIUS LEMONE GOVAN, Petitioner, v. GARY L. JOHNSON, Director, Texas Department of
Criminal Justice, Institutional Division, Respondent
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, ABILENE
DIVISION

1998 U.S. Dist. LEXIS 24272
CIVIL ACTION NO. 1:97-CV-241-C

July 20, 1998, Decided

July 20, 1998, Filed

Counsel

Kenedy, TX

{1998 U.S. Dist. LEXIS 1} Cornelius Lemone Govan, Petitioner, Pro se,

For Director Todd Gary Johnson, Respondent: Kristina Weber
Sillocks, LEAD ATTORNEY, Attorney General of Texas, Habeas Corpus Division, Austin, TX
USA; Mardi D. Motes, LEAD ATTORNEY, Texas Court of Criminal Appeals, Capitol Station,
Austin, TX USA.

Judges: SAM R. CUMMINGS, United States District Judge.

Opinion

Opinion by:

SAM R. CUMMINGS

Opinion

MEMORANDUM OPINION AND ORDER

The Court has considered the Petition for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner, Cornelius Lemone Govan (Govan), filed on September 17, 1997, pursuant to 28 U.S.C. § 2254 Respondent Gary L. Johnson (Johnson), filed his Answer on October 27, 1997, and Govan filed a response on November 13, 1997. Johnson filed state court records pertaining to Govan on November 14, 1997.

STANDARD OF REVIEW

The Court has jurisdiction pursuant to 28 U.S.C. §§ 2241 and 2254. Govan filed his petition after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); therefore, the AEDPA standards apply.

BACKGROUND

Johnson has lawful and valid custody of Govan pursuant to judgments and sentences in the 350th Judicial District Court of Taylor County, Texas, in Cause Nos. 603-D and 614-D. Govan was charged {1998 U.S. Dist. LEXIS 2} by two separate indictments for burglary of a building and aggravated robbery, both alleged to have been committed on or about October 30, 1986. One prior conviction was alleged in each indictment for enhancement purposes. Govan entered a plea of not guilty to each indictment and proceeded to trial by jury on both indictments. The jury found Govan

3yecases

guilty on both indictments on March 24, 1987. Govan plead true to the enhancement paragraph in each indictment, and the jury assessed punishment at life imprisonment on the burglary of a habitation charge and ninety-nine (99) years imprisonment on the aggravated robbery charge, to run consecutively to the life sentence.

Govan appealed his convictions to the Eleventh Court of Appeals, and his convictions were affirmed in a consolidated appeal on October 15, 1987.

Govan filed two identical state it applications challenging his each conviction, and the applications were denied by the Texas Court of Criminal Appeals, without written order, on May 14, 1997.

GOVAN'S HABEAS ALLEGATIONS

1. The trial court erred by imposing convictions and sentences for more than one offense arising out of the same transaction; and
2. He was denied equal protection because{1998 U.S. Dist. LEXIS 3} TDCJD is denying him a mandatory supervision release date on his life sentence.

DISCUSSION

Issue No 1: The trial court erred by imposing convictions and sentences for more than one offense arising out of the same transaction.

Govan was charged with burglary of a habitation and aggravated robbery. Govan and another man entered the home of Jane Adams on or about October 30, 1986 while Adams was not home. While Govan and the other man were still in the home, the owner, Ms. Adams, came home. When she walked into the kitchen, the other man came from behind her and held a knife to her throat. Ms. Adams testified that Govan had been in her bedroom and had taken some jewelry and a VCR. She was threatened, assaulted, forced into her car, and was driven to her bank. At the bank, the men cashed one of Ms. Adams' checks and she was later left on a dirt road.

The record reflects that Govan's initial intent was apparently to enter the home and commit theft (burglary of a habitation); however, the nature of the offense then changed to one of aggravated robbery.

Two indictments were returned against Govan on November 20, 1986, one for Burglary, of a Habitation and one for Aggravated Robbery. Both indictments{1998 U.S. Dist. LEXIS 4} contained an enhancement paragraph alleging one prior felony conviction.

According to the trial court's docket sheet, both the state and Govan announced ready for trial on both indictments on March 73, 1987, and both casts proceeded to trial jointly before a jury. Each indictment was read to the jury and at the dose of all the evidence, separate jury charges were submitted. The jury, in separate verdicts, found Govan guilty on each charge. Thereafter, Govan entered a plea of true to the enhancements provisions in each indictment, and the jury assessed punishment at life imprisonment on the Burglary of a Habitation charge and 99 years imprisonment on the Aggravated Robbery charge. The judgment and sentence on the Aggravated Robbery provided that the 99 year sentence was to run consecutively to the life sentence.

Although Govan argues that the two indictments were improperly joined for trial, Johnson responds only to an alleged claim of double jeopardy. Govan's response points out that he has never raised a double jeopardy claim, but is alleging an improper joinder.

Govan bases his improper joinder argument on former Tex. Penal Code §§ 3.01, et seq. which provided that a defendant could "be prosecuted in a single criminal{1998 U.S. Dist. LEXIS 5} action

for all offenses arising out of the same criminal episode." Tex. Penal Code § 3.02 (Vernon, 1974). Section 3.01 defined "criminal episode" as "the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property)." Govan's argument is that burglary of a habitation and aggravated robbery are not the same offense and, therefore, could not be tried together in a single criminal action pursuant to § 3.02.

The joinder of offenses committed before September 1, 1987, is governed by the law in effect at the time the offense was committed. *Nolle v. State*, 854 S.W.2d 304, 307 (Tex.App.-Austin 1993, pet. ref'd). "Before September 1, 1987, the penal code defined 'criminal episode' as the repeated commission of only one property offense." *Id.*

In *Ex parte Pena*, 820 S.W.2d 806 (Tex.Cr.App. 1991), the defendant was charged with burglary of a habitation and aggravated robbery in one indictment. The offenses were committed in March, 1987. The court found that misjoinder occurred because there was only one indictment for two distinct statutory offenses, although both were "offenses against property." Govan was charged in two separate indictments.

As noted by the trial court's docket sheet, Govan announced ready for trial on both indictments and both cases proceeded to trial at the same time. There is nothing in the record{1998 U.S. Dist. LEXIS 6} to indicate that Govan ever objected to trying both charges in the same trial.

It has long been the rule in this State that where a defendant is faced with multiple pending indictments, those indictments may be consolidated into a single proceeding with the express or implied (by failure to object) consent of the defendant (citations omitted). As a result, appellant, in failing to object to the consolidation of the two indictments into a single trial, is deemed to have given his consent. Having consented to a single trial for both indictments, appellant is barred from complaining of the resulting multiple convictions. *Milligan v. State*, 764 S.W.2d 802, 803 (Tex.Cr.App. 1989). See also, *Wedlow v. State*, 807 S.W.2d 847, 851 (Tex.App.-Dallas 1991, pet. ref'd) ("a defendant waives his right to severance if he agrees to, or fails to object to, prosecution of multiple indictments in a single trial"); *York v. State*, 848 S.W.2d 341 (Tex.App.-Texarkana 1993, pet. ref'd) (any error in consolidating two indictments into a single trial is waived when defendant fails to object); *Nolle*, 854 at 308 ("failure to timely object to the misjoinder waived his right to demand that this court set aside the convictions from the misjoined offenses").

Govan, having failed to object to the joinder of the two indictments for trial, waived his right to complain.

Issue No. 2 Govan was denied equal protection{1998 U.S. Dist. LEXIS 7} because TDCJ-HD is denying him a mandatory supervision release date on his life sentence.

Johnson acknowledges that Govan is correct in his assertion that he would be eligible for mandatory supervision on the burglary count. In fact, the records provided by Johnson indicate that Govan is being given flat time credit on his life sentence. Govan's complaint is that TDCJ-HD has not calculated a release date on his life sentence.

Johnson argues that, even though Govan is eligible for mandatory supervision on his life sentence, the aggravated robbery conviction excludes him from eligibility for release on mandatory supervision. His argument is based upon Tex. Code Crim. P. Ann. art. 42.18 § 8(c)(11) (Vernon Supp. 1987), which provided that aggravated robbery was excluded from mandatory supervision eligibility. However, this provision did not become effective until September 1, 1987, and did not apply to offenses committed prior to the effective date of the Act. The law in effect at the time Govan committed the offenses did not include the exclusion of certain offenses from eligibility for mandatory supervision. See Tex. Code Crim. P. Ann. art. 42.18 § 8(c) (1986), which provided that

A prisoner who is not on parole, except a person under sentence of death, shall be released to {1998 U.S. Dist. LEXIS 8} mandatory supervision by order of the board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. Tex. Civ. Stat. Ann. art 6181-1 defined "term" to be "the maximum term of confinement in the Texas Department of Corrections stated in the sentence of the convicting court." However, when two or more sentences were to be served consecutively (as in Govan's case), the term was to be determined as provided in Tex. Code Crim. P. Ann. art. 42.18 § 8(b). Section 8(b), which was in effect when Govan committed his offenses and was sentenced, provided that:

If a prisoner is serving a sentence for the offenses listed in Subdivision (1), Subsection (a), Section 3g, Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. Aggravated Robbery was a listed offense, and there was an affirmative finding in Govan's judgment and sentence on the Aggravated Robbery charge that a deadly {1998 U.S. Dist. LEXIS 9} weapon was used. Therefore, even though Govan is eligible for mandatory supervision on both the burglary of a habitation and aggravated robbery charges, he would not be eligible for release until he has served at least 20 calendar years.

CONCLUSION

The Court finds that Govan's Petition for Writ of Habeas Corpus should be granted in part and denied in part, as follows:

(1) Govan's petition seeking a finding that he is eligible for mandatory supervision on both the life sentence and the 99-year sentence is GRANTED; however, he would not be eligible for release until he has served at least 20 calendar years; and

(2) Govan's Petition for Writ of Habeas Corpus seeking to set aside his convictions for improper joinder should be and it is hereby DENIED.

All relief not expressly granted is denied and any pending motions are denied.

SO ORDERED.

Dated July 20, 1998.

/s/ Sam R. Cummings

SAM R. CUMMINGS

United States District Judge

JUDGMENT

For the reasons set out in the Order of even date,

It is ORDERED that Petitioner's Petition for Writ of Habeas Corpus is granted in part and denied in part.

Dated July 20, 1998.

/s/ Sam R. Cummings

SAM R. CUMMINGS

United States District Judge

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EXHIBIT E

IN THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF HELEN COPITKA

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Helen Copitka, who after being duly sworn, deposes as follows:

My name is Helen Copitka. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated and make this affidavit based on personal knowledge.

I was a voting member of the Texas Board of Pardons and Paroles from 1975 through 1983. In 1977 the Texas Legislature enacted the Mandatory Supervision Release Program (65Th Legislature-Regular Session, Prisoners-Supervision and Release, Chapter 346, S.B. No.152) The legislative intent was to provide a release program for "those prisoners not released on parole..." (Section 1)

It was my understanding that all persons, except those sentenced to death, were eligible for mandatory supervision release. Since death sentences were the only exceptions to the program, I understood the bill to include life sentences. It was also my understanding that we, the Board, had to order the release, to Mandatory Supervision, of all persons, except those sentenced to death, whose good conduct time plus calendar time equaled the maximum term to which they were sentenced. My understanding came from Section 15(c) which states:

A person who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct equal the maximum term to which he was sentenced.
(Emphasis Added)

Further, it was my understanding that persons serving life sentences, who were not granted parole, would automatically be released to Mandatory Supervision when their flat time and accrued good time equaled 60 years.

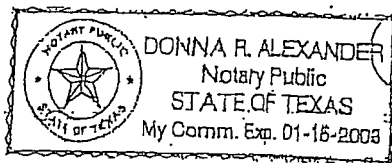
My belief that life equates to 60 years for purposes of mandatory supervision release is based on several sources. The attached chart clearly indicates that inmates serving life sentences and 60 year sentences serve the same amount of time to entitle them to release to mandatory supervision. The chart's last column indicates that inmates

who are State Approved Trusty (SAT) Class I, II, or III serving 60 year sentences or life sentences had to serve 24 calendar years to be released to mandatory supervision. Inmates classified as SAT IV would have to serve 26 years and 26 days to be released to mandatory supervision release while inmates in "Line I" would have to serve 36 years and 6 months. Further, in *Rummel V. Estelle*, 587 F.2d 651, 656 note 8 (5th Cir.1978) the Court held that "In Texas, a life sentence has essentially the same effect as one for sixty years."

Based on these sources it was, and still is, my understanding that prisoners serving life sentences have a "maximum term" to accumulate which entitles them to automatic release to Mandatory Supervision. This "maximum term" is 60 years. This was one of the factors that influenced my decisions as a voting ~~Board Member~~ ^{Commissioner} during my term.

Helen Copitka
Helen Copitka

SUBSCRIBED AND SWORN TO before me, the said Notary Public on this the 20th day of June 2001, to certify which witness my hand and seal of office



Donna R. Alexander
Notary Public in and for
the State of Texas

My Commission Expires:

1-15-2003

Continued From Page Six

Miscellaneous

There are few cases which do not fit neatly into any of the above categories. In *Ex parte Peel* the court held a Texas inmate who was serving his sentence currently with a federal sentence in a federal institution was not entitled to credit on his Texas sentence while he was incarcerated in the federal institution. This ruling did not foreclose the inmate from receiving the time but made it clear that he could not get it until he arrived at the Department of Corrections, if then. In *Ex parte Williams* the court held that a similarly situated inmate was entitled to good time credit on his Texas sentence for time spent in Federal custody, but, once again, he could not receive it until he reached the Department of Corrections.

C.C.P. and Article 5118a, V.A.C.S. The court held that the judge did not have the authority to make that order and that mandamus will lie to keep the judge from requiring day for day service of his sentence. Further, the applicant did not allege that he performed manual labor and thus he was not entitled to diminution of sentence pursuant to Article 43.10(6) Vernon's Ann. C.C.P. Lastly, Article 5118a, supra is not mandatory. While it does not impose a duty on the sheriff to grant good time he must consider that action and that consideration must be done in an equitable manner.

In *Ex parte Hayward* the court held that a trial judge cannot back date the sentence begin date to include time the defendant was not in custody. If it was erroneously done, however, the defendant is entitled to credit from the date of the purported action until the date of the issuance of the court's mandate since the defendant was released through no fault

never proper to back date a sentence in this manner although the proper credit should be given within the sentence.

Conclusion

Time credits and their calculation, as you can see, is an area of the law which should be easy, but is not, especially when the various categories overlap, which happens all too often. Many practitioners do not understand the concepts involved and should not give possibly erroneous estimates of the length of time a convicted client will have to spend within TDC. The area need not intimidate anyone, however, because many of the questions have been answered. I assure you that just about every inmate of the Department of Corrections understands the time laws backward and forward, or at least thinks he does. I hope that this article will assist you in keeping up.

APPENDIX "C" Relationship of Sentence Length To Time Served by Good Time Earning Categories

Sentence	SAT I, II, III CJ (Construction) 45 Days Good Time			SAT IV CIV (Construction) 40 Days Good Time			Line I 20 Days Good Time		
	Parole Eligible YY MM DD	Mand. Release YY MM DD	Parole Eligible YY MM DD	Parole Eligible YY MM DD	Mand. Release YY MM DD	Parole Eligible YY MM DD	Parole Eligible YY MM DD	Mand. Release YY MM DD	Parole Eligible YY MM DD
2	00 03 07	00 09 22	00 03 13	00 03 13	00 10 09	00 04 24	00 04 24	01 02 11	00 04 24
3	00 04 26	01 02 12	00 05 05	00 05 05	01 03 14	00 07 06	00 07 06	01 09 17	00 07 06
4	00 06 15	01 07 06	00 06 26	00 06 26	01 08 18	00 09 20	00 09 20	02 04 28	00 09 20
5	00 08 03	02 00 00	00 08 18	00 08 18	02 01 23	00 11 29	00 11 29	02 11 28	00 11 29
6	00 09 21	02 04 24	00 10 09	00 10 09	02 06 27	00 12 11	00 12 11	03 02 03	00 12 11
7	00 11 10	02 09 24	00 11 25	00 11 25	03 00 01	01 04 23	01 04 23	04 02 09	01 04 23
8	01 00 28	03 02 12	01 01 22	01 01 22	03 05 06	01 07 05	01 07 05	04 09 15	01 07 05
9	01 02 18	03 07 06	01 03 14	01 03 14	03 10 11	01 09 17	01 09 17	05 04 20	01 09 17
10	01 04 06	04 00 00	01 05 05	01 05 05	04 03 15	01 10 11	01 10 11	06 01 00	01 10 11
15	02 00 00	05 00 00	02 06 10	02 06 10	05 08 15	02 00 10	02 00 10	07 01 15	02 00 10
20	02 08 13	06 00 00	02 08 13	02 08 13	06 07 00	03 00 15	03 00 15	08 02 21	03 00 15
25	03 04 17	07 10 00	03 11 14	03 11 14	07 00 00	04 00 27	04 00 27	09 03 15	04 00 27
30	04 01 00	08 12 00	04 02 25	04 02 25	08 10 11	05 00 25	05 00 25	10 03 15	05 00 25
35	04 08 24	09 14 00	04 05 00	04 05 00	09 08 13	06 01 00	06 01 00	11 03 00	06 01 00
40	05 01 04	10 16 00	05 06 06	05 06 06	10 02 15	07 01 05	07 01 05	12 03 15	07 01 05
45	06 01 00	11 18 00	06 07 07	06 07 07	11 02 18	08 01 10	08 01 10	13 04 00	08 01 10
50	06 09 03	12 20 00	06 08 07	06 08 07	12 03 20	09 01 15	09 01 15	14 05 00	09 01 15
55	07 03 07	13 22 00	07 02 27	07 02 27	13 04 24	10 01 20	10 01 20	15 05 00	10 01 20
60	08 00 10	14 24 00	08 03 09	08 03 09	14 06 26	11 02 25	11 02 25	16 06 00	11 02 25

1. *Ex parte Spates*, 521 S.W.2d 265 (Tex. Crim. App. 1975).
2. *Ex parte Newell*, 502 S.W.2d 875 (Tex. Crim. App. 1979).
3. Art. 42.03, 2(a), Vernon's Ann. C.C.P.
4. 550 S.W.2d 699 (Tex. Crim. App. 1979).
5. 586 S.W.2d 547 (Tex. Crim. App. 1979).
6. *Ex parte Griffith*, 457 S.W.2d 61 (Tex. Crim. App. 1970); *Illinois v. Ueda*, 426 F.2d 797 (5th Cir. 1970).
7. 470 F.2d 1182 (5th Cir. 1973).
8. *Ex parte Griffith*, 548 S.W.2d 905 (Tex. Crim. App. 1977); *Shaw v. State*, 539 S.W.2d 1187 (Tex. Crim. App. 1976); *Ex parte Bates*, 538 S.W.2d 790 (Tex. Crim. App. 1976).
9. 586 S.W.2d 545 (Tex. Crim. App. 1979).
10. *Guerra v. State*, 518 S.W.2d 815 (Tex. Crim. App. 1975).
11. 430 S.W.2d 500 (Tex. Crim. App. 1968).
12. *Quintero v. State*, 469 S.W.2d 119 (Tex. Crim. App. 1971); *DeLeon v. State*, 466 S.W.2d 573 (Tex. Crim. App. 1971).
13. *Wilson v. State*, 471 S.W.2d 416 (Tex. Crim. App. 1971).
14. S.W.2d (No. 11011-15, delivered July 2, 1986).
15. Art. 6181-1, Sec. 4, V.A.C.S., Ann. C.C.P.
16. Art. 42.18, Sec. 16, supra.

EXHIBIT F

TEXAS SENTENCING

Third Edition

Ken Anderson
John Bradley

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The date of the offense is important because the legislature has changed the laws regarding parole eligibility several times. The parole law in effect when a defendant commits an offense governs the length of time the defendant must serve as an inmate before he or she is eligible for parole.³⁵ Four time periods are relevant to parole eligibility: September 1, 1977—August 31, 1987; September 1, 1987—August 31, 1993; after August 31, 1993; and, for a sex offense enhanced under a special repeat sex offender statute, after August 31, 1995.

The following rules regarding parole eligibility apply for each of these periods.

1. If an inmate is serving time for a non-3g offense, the Parole Board calculates the total amount of time an inmate has served as the calendar time he or she has served plus any time credited the inmate for good conduct.
2. If an inmate is serving time for a 3g offense, the Parole Board calculates the total amount of time an inmate has served without including the inmate's good conduct credit.
3. In calculating the percentage of a sentence that an inmate has served, the Parole Board considers a sentence of 61-99 years or life to be a sentence of 60 years.
4. If an inmate is serving time for a noncapital 3g offense, he or she must serve a minimum of two years up to a maximum of 20 years before he or she is eligible for parole, depending on the date of the offense.
5. If an inmate is serving a life sentence for capital murder, he or she must serve a minimum of 15 years up to a maximum of 40 years before he or she is eligible for parole, depending on the date of the offense.
6. If an inmate is eligible for parole, it does not mean that he or she must receive parole.

September 1, 1977—August 31, 1987.

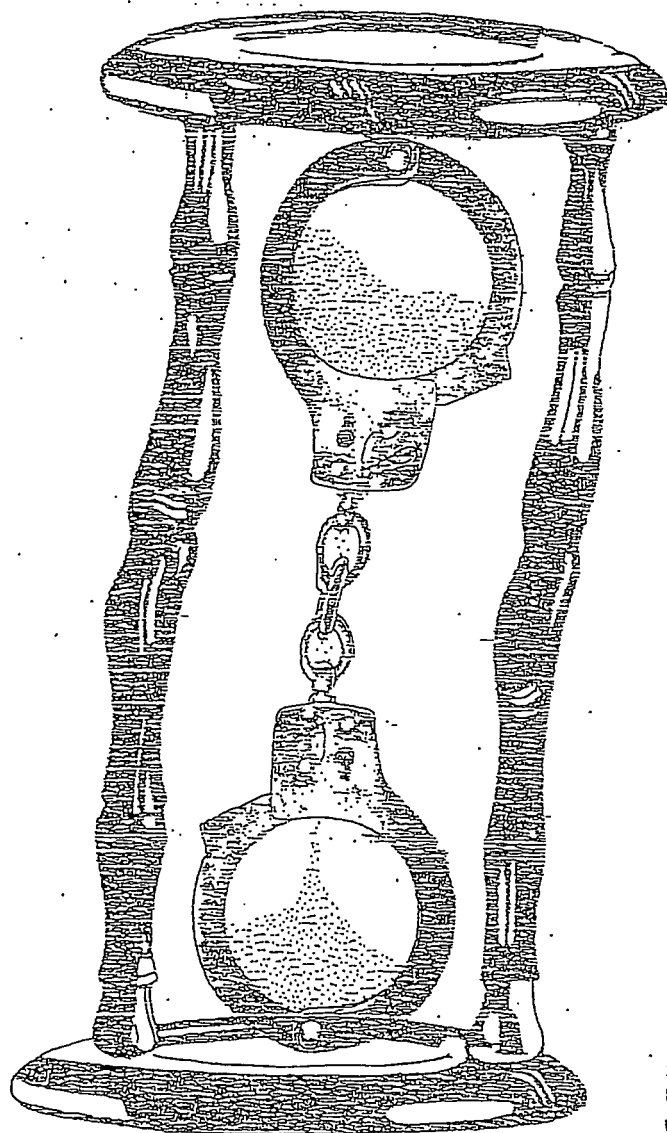
An inmate serving a sentence for an offense committed during this period must serve at least one-third of his or her sentence before he or she is eligible for parole.³⁶ A 3g inmate must serve a minimum of two up to a maximum of 20 calendar years before he or she is eligible for parole.

September 1, 1987—August 31, 1993.

An inmate serving a sentence for an offense committed during this period must serve at least one-fourth of his or her sentence before he or she is eligible for

35. *Ex parte Chirce*, 878 S.W.2d 5 (Tex. Crim. App. 1992).

36. *Id.* at 8.



TIME

Credits And Related Problems

By John G. Jasuta

litigation in the area of time credits. Another, and more visible result, is that inmates are released back to the community much sooner.

Under the old law the inmate who exhibited perfect behavior would earn his or her time in approximately one-half of the time actually assessed. Time could be roughly figured on a two to one basis with a fair degree of accuracy. Today, given participation in various programs, an inmate can receive as much as 60 days of additional time credit for every month spent incarcerated. Thus, an inmate can now receive three for one time, that is, he can serve his sentence or become eligible for parole in one-third of the sentence assessed. It should be the rare inmate, however, who receives the maximum award of good conduct time.

For purposes of time earning the TDC has set up 13 time earning categories. Inmates can be reclassified between these various categories as they achieve various objectives within the system. As one can see by studying the chart below, calculating time credits has truly become a task for the computer, not a human being.

The classifications used by the Texas Department of Corrections and the amount of time earned in each classification are set out below. Remember that this only includes good conduct time including trusty time. To obtain true time to serve, this time must be added to the actual day for day time served. (See chart).

It should be obvious that good time and its effect on the amount of time the client will actually spend incarcerated in the Department of Corrections is something that cannot be predicted, especially when one knows that inclusion in the different time earning categories depends on various behaviors within the TDC including job performance, educational achievement, and vocational training participation as well as the more traditional "good behavior."

For some interesting examples of the effects of good conduct time (interesting at least to the author), see Appendices A-C.

The purpose of this article is to alert the members of the bench and bar to an area of the law which has developed slowly but which, at least to incarcerated people, is of critical importance. Time credit calculations and the law affecting them in Texas are difficult only due to the number of different categories involved and the different methods of calculating time in those categories. Reading this article will not make the subject seem any easier but at least you will understand why it is foolhardy to try to predict the length of time an inmate will actually spend incarcerated.

Good Conduct Time

Article 6181-1, V.A.C.S., the statute governing the award of good conduct time credit for persons committed to the Texas Department of Corrections, was substantially amended by the Legislature in 1983. The amendments became effective June 17, 1983, but the statute specifically mandates retroactive application. One of the effects of the amendments, along with changes in the way parole eligibility is determined, has been increased

APPENDIX "B" Parole Eligibility

Sentence	Required Time Credit* Yr. Mo. Da.	Class I Yr. Mo. Da.	SAT IV Yr. Mo. Da.	SAT I, II, III Yr. Mo. Da.
1	0-0-0	0-2-12	0-1-22	0-1-20
2	0-8-4	0-4-23	0-3-14	0-3-8
3	1-0-0	0-7-6	0-5-6	0-4-27
4	1-4-0	0-9-18	0-6-28	0-6-16
5	1-8-0	1-0-0	0-8-29	0-8-5
6	2-0-0	1-2-12	0-10-12	0-9-24
7	2-4-0	1-4-24	1-0-4	0-11-23
8	2-8-0	1-7-6	1-1-26	1-1-2
9	3-0-0	1-9-18	1-3-18	1-2-21
10	3-4-0	2-0-0	1-5-10	1-4-10
11	3-8-0	2-2-12	1-7-2	1-5-29
12	4-0-0	2-4-24	1-8-24	1-7-18
13	4-4-0	2-7-6	1-10-16	1-9-7
14	4-8-0	2-9-18	2-0-8	1-10-26
15	5-0-0	3-0-0	2-2-0	2-0-15
16	5-4-0	3-2-12	2-3-22	2-2-4
17	5-8-0	3-4-24	2-5-14	2-3-23
18	6-0-0	3-7-6	2-7-6	2-5-12
19	6-4-0	3-9-18	2-8-28	2-7-1
20	6-8-0	4-0-0	2-10-20	2-8-20
60-1-12	20-0-0	12-0-0	8-8-0	8-2-0

APPENDIX "C" Relationship of Sentence Length To Time Served by Good Time Earning Categories

Sentence	SAT I, II, III C3 (Construction) 45 Days Good Time			SAT IV C IV (Construction) 40 Days Good Time			Line I 20 Days Good Time		
	Parole Eligible YY MM DD	Mand. Release YY MM DD		Parole Eligible YY MM DD	Mand. Release YY MM DD		Parole Eligible YY MM DD	Mand. Release YY MM DD	
2	00 03 07	00 09 22		00 03 13	00 09 09		00 04 24	01 02 11	
3	00 04 26	01 02 17		00 05 05	00 10 09		00 07 06	01 09 17	
4	00 06 15	01 07 06		00 06 26	01 08 18		00 09 20	02 04 28	
5	00 08 03	02 00 00		00 08 18	02 01 23		00 11 29	02 11 28	
6	00 10 10	02 04 24		00 10 09	02 06 27		01 02 11	03 07 03	
7	00 11 21	02 09 18		00 10 00	03 01 01		01 04 23	04 02 09	
8	01 01 28	03 02 12		01 01 14	03 05 08		01 07 05	04 09 15	
9	01 03 18	03 07 06		01 03 05	04 10 11		01 09 17	05 04 20	
10	01 05 05	04 00 00		01 05 05	04 15 15		02 01 03	06 01 00	
15	02 08 08	05 08 00		02 08 23	06 05 08		03 03 15	07 02 15	
20	03 01 13	06 01 00		03 01 10	07 07 00		04 05 27	08 04 21	
25	03 04 17	06 10 00		03 04 14	08 09 11		05 08 25	09 07 15	
30	03 07 23	07 01 00		03 07 20	09 01 13		06 11 08	10 03 00	
35	04 01 24	07 14 14		04 01 25	10 02 15		07 01 05	11 04 15	
40	04 04 27	08 01 00		04 04 25	11 03 18		08 01 10	12 04 00	
45	04 07 03	08 08 00		04 07 27	12 04 22		09 01 15	13 05 00	
50	05 01 08	09 01 00		05 01 28	13 05 24		10 01 20	14 06 05	
55	05 04 13	09 08 00		05 04 33	14 06 26		11 01 25	15 07 10	
60	05 07 18	10 01 00		05 07 38	15 07 28		12 01 30	16 08 15	
65	06 01 23	10 08 00		06 01 43	16 08 30		13 01 35	17 09 20	
70	06 04 28	11 01 00		06 04 48	17 09 32		14 01 40	18 10 25	
75	06 07 33	11 08 00		06 07 53	18 10 34		15 01 45	19 11 30	
80	06 10 38	12 01 00		06 10 58	19 11 36		16 01 50	20 12 35	
85	06 13 43	12 08 00		06 13 63	20 12 38		17 01 55	21 01 40	
90	06 16 48	13 01 00		06 16 68	21 01 40		18 02 00	22 02 45	
95	06 19 53	13 08 00		06 19 73	22 02 42		19 02 05	23 03 50	
100	06 22 58	14 01 00		06 22 78	23 03 44		20 02 10	24 04 55	
105	06 25 63	14 08 00		06 25 83	24 03 46		21 02 15	25 05 00	
110	06 28 68	15 01 00		06 28 88	25 03 48		22 02 20	26 06 05	
115	06 31 73	15 08 00		06 31 93	26 03 50		23 02 25	27 07 10	
120	06 34 78	16 01 00		06 34 98	27 03 52		24 02 30	28 08 15	
125	06 37 83	16 08 00		06 37 103	28 03 54		25 02 35	29 09 20	
130	06 40 88	17 01 00		06 40 108	29 03 56		26 02 40	30 10 25	
135	06 43 93	17 08 00		06 43 113	30 03 58		27 02 45	31 11 30	
140	06 46 98	18 01 00		06 46 118	31 03 60		28 02 50	32 12 35	
145	06 49 103	18 08 00		06 49 123	32 03 62		29 02 55	33 01 40	
150	06 52 108	19 01 00		06 52 128	33 03 64		30 03 00	34 02 45	
155	06 55 113	19 08 00		06 55 133	34 03 66		31 03 05	35 03 50	
160	06 58 118	20 01 00		06 58 138	35 03 68		32 03 10	36 04 55	
165	07 01 123	20 08 00		07 01 143	36 03 70		33 03 15	37 05 00	
170	07 04 128	21 01 00		07 04 148	37 03 72		34 03 20	38 06 05	
175	07 07 133	21 08 00		07 07 153	38 03 74		35 03 25	39 07 10	
180	07 10 138	22 01 00		07 10 158	39 03 76		36 03 30	40 08 15	
185	07 13 143	22 08 00		07 13 163	40 03 78		37 03 35	41 09 20	
190	07 16 148	23 01 00		07 16 168	41 03 80		38 03 40	42 10 25	
195	07 19 153	23 08 00		07 19 173	42 03 82		39 03 45	43 11 30	
200	07 22 158	24 01 00		07 22 178	43 03 84		40 03 50	44 12 35	

EXHIBIT H

T. D. C. J. - INSTITUTIONAL DIVISION
DATE 05/28/21 RECORDS OFFICE TIME 07:49:17
TDCJID: 00328377 NAME: GUTIERREZ, ERNESTO UNIT BILL CLEMENTS
SENT. BEGIN DATE 10/29/1981 TDC RECEIVE DATE 12/09/1981
INMATE STATUS STATE APPROVED TRUSTY CLASS III LAST PCR REQUEST 05/28/21

SENT. OF RECORD	LIFE	MAND	SUPV	PAROLE
FLAT TIME SERVED	00039 YRS 06 MOS 29 DAYS	000	%	000 %
GOOD TIME EARNED	00056 YRS 07 MOS 16 DAYS	000	%	000 %
WORK TIME EARNED	00000 YRS 00 MOS 00 DAYS	000	%	000 %
MAND SUPV TIME CREDITS	00096 YRS 02 MOS 15 DAYS	000	%	
PAROLE TIME CREDITS	00096 YRS 02 MOS 15 DAYS			000 %
MINIMUM EXPIRATION DTE: 01/01/9999				
MAXIMUM EXPIRATION DTE: 01/01/9999				

JAIL GOOD TIME RECD YES NUMBER OF DETAINERS 00
GOOD TIME LOST 00025 DAYS WORK TIME LOST 00000 DAYS
PAROLE STATUS BPP DATE TDC CALC DATE 10/29/2001

*CALC PAROLE ELIG ON CALENDAR TIME

REQUEST
CONDUCT RECORD:

EXHIBIT H