

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARL J. HASKINS, JR.,	§
	§
Petitioner Below-	§ No. 406, 1999
Appellant,	§
	§
v.	§ Court Below— Superior Court
	§ of the State of Delaware,
DELAWARE CORRECTIONAL	§ in and for New Castle County
CENTER, CATHY L.	§ C.A. No. 98M-08-022
GUESSFORD, RECORDS	§
DEPARTMENT,	§
	§
Respondents Below-	§
Appellees.	§

Submitted: March 23, 2000

Decided: April 28, 2000

Before **WALSH, HOLLAND** and **HARTNETT**, Justices

ORDER

This 28th day of April 2000, upon consideration of the appellant's opening brief and the appellees' motion to affirm, it appears to the Court that:

(1) The petitioner-appellant, Carl J. Haskins, Jr., filed this appeal from the Superior Court's orders denying his petition for a writ of mandamus and denying reargument. The State of Delaware, as the real party in interest, has moved to affirm the Superior Court's judgment on the

ground that it is manifest on the face of Haskins' opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) Haskins is an inmate incarcerated at the Delaware Correctional Center ("DCC"). In December 1989, the Superior Court sentenced him to a 25-year term of incarceration. In his petition for a writ of mandamus Haskins sought to compel DCC to credit him with 785 days of "good time," reflecting his completion of several educational and rehabilitation programs, and to recalculate his sentence accordingly. The State filed a motion to dismiss Haskins' petition for failure to state a claim upon which relief may be granted,² which was granted by the Superior Court.

(3) In this appeal, Haskins claims that: i) the Superior Court had subject matter jurisdiction over his petition;³ ii) the DCC Executive Committee violated his right to due process by changing the "good time" policy in 1993; iii) DCC was without statutory authority to change the

¹Supr. Ct. R. 25(a).

²Super. Ct. Civ. R. 12(b) (6).

³The State argued in its motion to dismiss that the Superior Court did not have subject matter jurisdiction over Haskins' petition. Super. Ct. Civ. R. 12(b) (1). Because the Superior Court did not reach that issue in its decision, it is not properly before us in this appeal.

“good time” policy; iv) the “good time” policy change was an illegal ex post facto violation; v) the Superior Court abused its discretion when it denied his motion for default judgment;⁴ and vi) the Department of Justice has a conflict of interest in defending this case.⁵

(4) A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official or agency to compel the performance of a duty to which the petitioner has established a clear legal right.⁶

(5) Dismissal for failure to state a claim upon which relief may be granted is appropriate where it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief, accepting all well-pleaded allegations in the complaint as true and drawing all reasonable inferences in favor of the non-movant.⁷

⁴This issue is reviewable as an interlocutory order of the Superior Court. *Robinson v. Meding*, Del. Supr., 163 A.2d 272, 275 (1960).

⁵This claim was not presented to the Superior Court in the first instance and this Court will not consider it for the first time on appeal. Supr. Ct. R. 8.

⁶*Clough v. State*, Del. Supr., 686 A.2d 158, 159 (1996); 10 Del. C. § 564.

⁷*Ramunno v. Cawley*, Del. Supr., 705 A.2d 1029, 1034 (1998).

(6) “Good time” credit is an “administrative device” that provides for an inmate’s early release.⁸ “Good time” does not exist as a matter of constitutional right, but is strictly a statutory matter.⁹ Behavior credits may be awarded for an inmate’s continuing compliance with the Department of Correction’s disciplinary rules and regulations, while merit credits may be awarded for an inmate’s participation in certain education, rehabilitation or work programs.¹⁰ The Commissioner of the Department of Correction is authorized to designate the appropriate educational and/or rehabilitation programs for which “good time” credit may be awarded.¹¹

(7) In this case, the Treatment Supervisor for DCC submitted an affidavit stating that several of the programs cited by Haskins were not designated to receive “good time” credit and that, based upon his review of Haskins’ file, Haskins had been credited with all of the “good time” to which he was entitled. Attached to the affidavit was a copy of Haskins’ “good time” record. Based upon the affidavit and supporting documentation, the Superior Court properly held that Haskins’ petition

⁸*Snyder v. Andrews*, Del. Supr., 708 A.2d 237, 242 (1998).

⁹*Id.*

¹⁰*Id.* at 243.

¹¹11 Del. C. § 4381(c).

failed to state a claim upon which a writ of mandamus might be granted because he failed to establish a clear legal right to the claimed “good time” credits.

(8) Haskins’ claims that the 1993 change in the “good time” policy constituted a violation of his constitutional rights, an ex post facto violation and an act unauthorized by statute are without merit. “Good time” is not a constitutional right.¹² Furthermore, the Commissioner had the statutory authority in 1993 to change the programs for which an inmate might receive “good time” credit.¹³

(9) Equally unavailing is Haskins’ claim that the Superior Court abused its discretion in denying his motion for default judgment against the State. The record indicates the State had not properly been served at the time the motion was filed. Thus, the Superior Court was within its discretion and committed no legal error in denying the motion for default judgment.

¹²*Snyder v. Andrews*, 708 A.2d at 242.

¹³11 Del. C. § 4381(c). Haskins does not argue that he had “good time” credits retroactively eliminated as a result of the policy change in 1993. As such, this case does not present the kind of “ex post facto-like” situation that occurred in *Johnson v. State et al.*, Del. Supr., 472 A.2d 1311, 1314 (1984). There, this Court held that the unilateral decision of the Department of Correction to give retrospective effect to a judicial decision eliminating the application of “good time” credits to minimum mandatory prison terms violated due process.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm pursuant to Supreme Court Rule 25(a) is hereby GRANTED. The judgment of the Superior Court is hereby AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice