

3. State of West Virginia v. Elliott Fitzsimmons, No. 11-0977

Factual Background: The defendant, Elliott Fitzsimmons, entered a guilty plea for the charge of entering without breaking. His sentence of one to ten years in prison was suspended in lieu of his placement at the Anthony Center for Youthful Offenders. The defendant was placed at the Anthony Center in August 2010. After several months, the administration at the Anthony Center made a determination that the defendant was unfit to continue placement at that facility. In February 2011, the circuit court ordered that the defendant be transferred to the Northern Regional Jail. The basis of the termination of his placement at the Anthony Center was multiple write-ups at the Anthony Center. The circuit court scheduled a hearing to determine whether the warden at the Anthony Center abused his discretion in terminating the defendant's placement at the facility. Prior to the hearing, the defendant's attorney requested that the hearing be continued so that he could obtain discovery, or gain additional information regarding the warden's decision. The motion was denied. The circuit court upheld the warden's decision to terminate the defendant's placement at the Anthony Center. The circuit court reinstated the one to ten year sentence and ordered that he not be given any credit towards the one to ten year prison sentence for the time served at the Anthony Center. Counsel for the defendant filed a motion for relief from judgment for credit for time served. The motion was denied. The defendant appeals the circuit court's order affirming his removal from the Anthony Center and denying him credit for time served.

Defendant's Argument: Counsel for the defendant argues that he should have been given an opportunity to conduct discovery regarding the potential abusiveness of the warden's decision to terminate the defendant's placement at the Anthony Center. The defendant asserts that circuit court should have reviewed the evidence that had been presented regarding his write-ups to ensure that the warden did not abuse his discretion in determining that he was unfit to remain at the Anthony Center. Additionally, the defendant argues that the circuit court erred in denying his request for credit for time served while at the Anthony Center against his sentence of one to ten years in the penitentiary. The defendant contends that while placed at the Anthony Center, he had the same limits placed on his liberty as would any individual placed in prison. Therefore, his constitutional rights were violated by not giving him credit for the time he served at the Anthony Center.

State's Argument: The State argues that the motion for a continuance and for discovery was properly denied because the hearing before the circuit court does not require the court to redetermine the validity of the defendant's violations. The State argues that all that is required is proof that the defendant had an opportunity to be heard before the prison magistrate regarding his violations. Since the State contends that the defendant had hearings before a magistrate for each of his violations, the circuit court did not err in upholding the warden's determination that he was unfit to remain at the Anthony Center. The respondent argues that the circuit court judge has the discretion in granting credit for time served, and there is no finding that the circuit court judge abused his discretion. The State acknowledges that if this Court determines that the denial of credit for time served is unconstitutional, it would be proper to grant the defendant's request for time served.