

No. 27444 -- State of West Virginia ex rel. Robert Valentine v. Ron Watkins, Sheriff of Marion County

FILED

July 14, 2000

Maynard, Chief Justice, dissenting: DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
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I dissent because I believe the petitioner was accorded a prompt parole revocation hearing under W.Va. Code § 62-12-19 (1998) and, even if he were not, awarding him good time credit is not the proper remedy.

In the instant case, the petitioner's parole revocation hearing was held eight days after the expiration of the 35-day period set forth in 7A W.Va. C.S.R. § 92-1-11.1(b). Because parole revocation hearings must be conducted within the protections afforded by the state and federal constitutions, such hearings must be orderly, fair, and free of unreasonable, capricious, or arbitrary conduct. There is no evidence of arbitrary or capricious conduct by the parole board. Absent such evidence, I am unwilling to conclude that an additional eight day period between the petitioner's incarceration and the revocation hearing is, by law, unreasonable.

Second, in those instances where a parolee is incarcerated and is not given a prompt hearing, I believe the proper remedy is to seek a writ of mandamus to compel a hearing. *See State ex rel. Carper v. W.Va. Parole Bd.*, 203 W.Va. 583, 509 S.E.2d 864 (1998) (petitioner sought a writ of mandamus to compel the state parole board to review him for parole on an annual basis). Because such

a remedy exists, it is not necessary for this Court to create from whole cloth a right to good time credit when a revocation hearing is not promptly held.

Under our law, “[a] prisoner is not entitled to good time credits while on parole.” Syllabus Point 11, *Woodring v. Whyte*, 161 W.Va. 262, 242 S.E.2d 238 (1978). Also, W.Va. Code § 28-5-27(c) (1984) says that “[n]o inmate may be granted any good time for time served either on parole or bond or in any other status whereby he or she is not physically incarcerated.” In this case, the parole status of the petitioner had not yet been revoked so, according to our law, he is not entitled to good time credits. This should have settled the issue.

Because the petitioner received a prompt revocation hearing and is not entitled to good time credits while on parole, I would have denied the petitioner the relief which he seeks. Accordingly, I dissent.