

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Lawrence E. Scible, Petitioner
Below, Petitioner**

vs.) No. 11-0368(Fayette County 08-C-380)

**David Ballard, Warden, Mt. Olive
Correctional Complex, Respondent
Below, Respondent**

FILED

**March 12, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioner Lawrence E. Scible, pro se, appeals the circuit court's October 20, 2010, order dismissing his petition for a writ of habeas corpus. The respondent warden, by Charles Houdyschell Jr., his attorney, filed a timely response, to which petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on May 5, 2011. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner is an inmate currently housed at Mt. Olive Correctional Complex.¹ At the time of the events alleged in his petition for a writ of habeas corpus, petitioner was assigned to the Betty Slayton Inmate Work Camp ("the Work Camp") on the campus of Mt. Olive. In his petition, petitioner challenged various terms and conditions of confinement at the Work Camp. The circuit court dismissed petitioner's habeas petition initially on the ground he had failed to exhaust his administrative remedies in an order entered on January 12, 2009.

In a prior appeal by petitioner, this Court reversed the dismissal and remanded the case to the circuit court with directions to address the substantive merits of petitioner's

¹ This is based upon the address petitioner put on top of his reply brief. Petitioner has been a resident of many different correctional institutions since the time of the events alleged in his petition for a writ of habeas corpus.

petition. The circuit court thereafter directed the respondent warden to file a response to Mr. Scible's habeas petition. The respondent warden filed his response on June 29, 2010. In his response, the respondent warden stated that he reserved the right to seek to have the circuit court determine whether petitioner's habeas petition manifested an intent to harass under West Virginia Code §25-1A-6, which provides for the loss of "good time" credit.²

In an order entered on October 20, 2010, the circuit court dismissed petitioner's habeas corpus on its merits. The circuit court also decided to apply West Virginia Code §25-1A-6 and ordered the forfeiture petitioner's "good time" credit up to the date of the order:

37. In consideration of all of the above, and in consideration of the petitioner's numerous federal actions, including a federal action concerning a [sic] some of the same issues presented to this Court in this action, the Court **CONCLUDES** that the petitioner filed this frivolous action in an effort to harass [sic] the respondents. Therefore, pursuant to the provisions of West Virginia Code §25-1A-6, the Court hereby orders that the petitioner herein Lawrence E. Scible forfeits his earned good time credit.[³]

² "Good time" is a statutory commutation of an inmate's sentence based on each day the inmate serves his sentence. *See* W.Va. Code §§28-5-27(b) and (c). This statutory commutation is applied against only the maximum term of the inmate's indeterminate or determinate sentence. Assuming that the inmate is not granted parole, yet loses no "good time" for prison misconduct, his time incarcerated and the statutory commutation meet at the halfway point of the inmate's maximum term. The inmate is released at that point.

³ West Virginia Code §25-1A-6 is part of the Prisoner Litigation Reform Act, West Virginia Code §§25-1A-1 *et seq.* Quoted in full, West Virginia Code §25-1A-6 provides the following:

Upon a finding by the court that a civil action is frivolous, malicious or intended to harass the party against whom the civil action is brought or that the inmate knowingly testified falsely or otherwise knowingly presented false evidence or information to the court, the court may order that the inmate forfeit earned good-time credit. A court may take additional evidence to . . .

. . . determine the appropriate amount of good-time credit to be

The circuit court ordered the forfeiture of petitioner's "good time" without the respondent warden affirmatively asserting his reserved right to seek to have §25-1A-6 applied. Petitioner now appeals the circuit court's dismissal of his petition, raising the sole contention that the court improperly sanctioned him for filing his petition by ordering the forfeiture of his "good time" credit up to the date of the order.⁴

STANDARD OF REVIEW

The standard of review for habeas cases is set forth in Syllabus Point One, *Mathena v. Haines*, 219 W.Va. 417, 633 S.E.2d 771 (2006):

In reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a *de novo* review.

DISCUSSION

Petitioner argues that the circuit court's order that he forfeits his "good time" credit up to the date of the court's order constitutes a sanction that is disparate, excessive, and unwarranted. Petitioner further argues that the circuit court also erred in considering his previous federal filings in deciding to order a forfeiture of his "good time." Petitioner argues that West Virginia Code §25-1A-6 violates various provisions of the United States and West Virginia Constitutions. The respondent warden states that as a general rule, a penalty hearing before "good time" credit is ordered forfeit would be best practice but that petitioner's many arguments against West Virginia Code §25-1A-6 and the loss of his "good time" lack substantial merit. The respondent warden notes that during petitioner's appeal of the circuit court's first dismissal of his habeas petition, petitioner advised this Court that he was a "prolific litigator" having filed numerous federal and state lawsuits. In his reply brief, petitioner states that he may have previously said he was a "frequent filer" but that he never boasted of being such. After careful consideration of the parties' arguments and the record

forfeited.

⁴ Petitioner indicates in his brief that the effect of the circuit court's order meant he forfeits 3,945 days of "good time" credit.

on appeal, this Court concludes that the circuit court did not abuse its discretion in making the forfeiture of petitioner's "good time" part of its ultimate disposition of this case.

For the foregoing reasons, we find no error in the decision of the circuit court and its dismissal of petitioner's habeas petition, including the forfeiture of petitioner's "good time" credit, is affirmed.

Affirmed.

ISSUED: March 12, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh