

This 30th day of September, 2021, upon consideration of the Motion of Respondents Robert L. May and Rebecca McBride (“Respondents”) to Dismiss Petitioner’s Petition for Writ of Mandamus,¹ the Opposition of Petitioner Lionel M. Walley’s (“Walley”),² and the record in this case it appears to the Court that:

1. Walley was declared a habitual offender pursuant to 11 *Del. C.* § 4214(b) and sentenced to life in prison without the possibility of parole on May 1, 1992.³ Later, Walley’s mandatory life sentence as a habitual offender was commuted by the Governor. The life sentence was suspended for an additional 10 years at Level V, suspended after 5 years and completion of the KEY Program.⁴ That commuted sentence was effective August 7, 2017.⁵ It also appears that, Walley is serving an additional consecutive sentence of 2 years, 1 month, and 18 days for a parole violation.⁶

2. In his Petition for Writ of Mandamus, Walley seeks an order compelling the Department of Correction (“DOC”) to grant him certain additional earned good time credits and issue him a new status sheet reflecting those additional good time

¹ D.I. 18.

² D.I. 20.

³ D.I. 7.

⁴ D.I. 5. A later sentence modification substituted an appropriate Level V treatment program at DOC’s discretion for the KEY Program because the KEY Program was no longer available.

⁵ *Id.*

⁶ Defs.’ Mot. Dismiss at Ex 3, D.I.

credits.⁷ Specifically, Walley is seeking good time credits for the period of time he was incarcerated prior to the commutation of his sentence.⁸ He acknowledges that he was ineligible to earn good time credits while serving a mandatory life sentence, but argues that once that sentence was commuted, it became a good time eligible sentence *ab initio*.⁹ In other words, Walley claims he is entitled to good time credits for the entire period of his incarceration, beginning when he was first imprisoned and ending at the conclusion of his sentence, some 37 years (or 32 years if he successfully completes the treatment program.)¹⁰

3. In their motion to dismiss, Respondents argue that the Petition should be dismissed because Walley has not established that he has a clear right to require DOC to “retroactively apply statutory and accrued good time to Petitioner’s previous life sentence.”¹¹ They point out that Walley cites no legal authority in support of his request and contend that it contravenes the applicable statute, 11 *Del. C.* § 4381(a)(b).¹² Additionally, they note that a substantially identical petition for a writ of mandamus was denied on August 22, 2018.¹³

⁷ D.I. 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Defs.’ Mot. to Dismiss at 3-4, D.I. 18.

¹² *Id.* at 4.

¹³ *Id.* at 2.

4. The standards of Superior Court Civil Rule 12(b)(6) apply when the Court considers motions to dismiss mandamus petitions.¹⁴ A motion to dismiss for failure to state a claim pursuant to Superior Court Rule 12(b)(6) will not be granted if the “plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”¹⁵ The Court's review is limited to the well-pled allegations in the complaint.¹⁶ In ruling on a 12(b) motion, the Court “must draw all reasonable factual inferences in favor of the party opposing the motion.”¹⁷ Dismissal is warranted “only if it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.”¹⁸

5. “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.”¹⁹ In order for the writ to issue, the petitioner must demonstrate that: 1) he has a clear right to the performance of the duty; 2) no other adequate remedy is available; and 3) the agency

¹⁴ *Allen v. Coupe*, 2016 WL 676041 at *2 (Del. Super. Feb. 18, 2016).

¹⁵ *Browne v. Robb*, 583 A.2d 949, 950 (Del. 1990).

¹⁶ *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Samans v. Dep't. of Correction*, 2015 WL 1421411 at *1 (Del., Mar. 27, 2015) quoting *Clough v. State*, 686 A.2d 158, 159 (Del. 1996).

has arbitrarily failed or refused to perform its duty.²⁰ Finally, a writ of mandamus will not issue to compel a discretionary act.²¹

6. The language of the gubernatorial commutation reads in pertinent part:

I, John C. Carney, Governor of the State of Delaware ...have granted and do grant unto Lionel M. Walley...a commutation of sentence for the offenses of RESISTING ARREST, POSSESSION WITH INTENT TO DELIVER A NARCOTIC SCHEDULE II CONTROLLED SUBSTANCE, POSSESSION/DELIVERY OF DRUG PARAPHERNALIA. Specifically, the applicant's sentence would change from [sic] allow for parole eligibility, which would permit proper programming and rehabilitation so that he can be transition [sic] out and re-enter society successfully, to **suspend remainder of life sentence for ten additional years at Level V; suspended after five years and completion of Key for five years at level IV; remainder of Level IV sentence suspended after completion of Crest fore 18 months at Level III.**²² (Emphasis in original.)

The commutation specifically recognized that Walley “had participated in various programs such as drug treatment, behavior treatment, and anger management.”²³ It does not direct the DOC to award Walley with additional good time credits, however. The relevant statute cited by the Respondents in their motion and Walley in his opposition is 11 *Del. C.* § 4381. “[A]ll sentences, other than a life sentence ...may

²⁰ *Id.*, citing *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

²¹ *Id.*, citing *Darby v. New Castle Gunning Bedford Educ. Ass'n.*, 336 A.2d 209,211 (Del. 1975).

²² Pet. For Writ Mandamus at Ex. 1, D.I. 1.

²³ *Id.*

be reduced by good time credit under the provisions of this subchapter and rules and regulations adopted by the Commissioner of Corrections.”²⁴ But, “[t]he awarding of good time credit set forth in subsection (a) of this section above will not apply to sentences imposed pursuant to § 4214...”²⁵ The rates at which good time may be earned are set out in § 4381, which sets out a maximum of 36 days in any one year for good behavior,²⁶ up to five days per month for program participation with up to an additional 60 days per year for successful completion of approved recidivism reduction programs,²⁷ and a maximum of 160 days per year for all good time.²⁸

7. Considering the language of the commutation together with §§ 4381(a) and (b), it is evident that Walley does not have a clear right to earned good time credits from the inception of his sentence to the effective date of his commutation. During that time, he was serving a life sentence as a habitual offender under § 4214. Both the fact that he was serving a life sentence and that it was imposed under § 4214 made him ineligible for good time credit. The fact that the length of his sentence was changed in 2017 does not change the character of that sentence before it was changed. It was a sentence for which he was ineligible for good time credit when the good time credit he now seeks would have had to have been earned. Even

²⁴ 11 *Del. C.* § 4381(a).

²⁵ 11 *Del. C.* § 4381(b).

²⁶ 11 *Del. C.* § 4381(c)(3).

²⁷ 11 *Del. C.* § 4381(d).

²⁸ 11 *Del. C.* § 4381(e).

the 2017 commutation did not change the fact that the sentence is a life sentence still. The commutation merely acted “to **suspend the remainder of life sentence**” and imposed a term of years after the suspension.²⁹ The life sentence is now a suspended life sentence. It is the 10-year term following the suspension of his life sentence in 2017 to which good time credit lawfully may be applied. It appears that DOC has made that calculation.³⁰ Accordingly, Walley has no clear right to good time credit prior to 2017.

7. On August 22, 2018, this Court denied Walley’s Complaint in Proceeding for Extraordinary Writ.³¹ The extraordinary writ Walley sought was a writ of mandamus.³² That petition sought the same relief as this petition and was based on the same argument that he was entitled to good time credit for the time he served prior to the commutation.³³ In fact, much of the language in the two petitions is identical.³⁴ Walley did not appeal this Court’s denial of his 2018 petition. Thus, *res judicata* and/or collateral estoppel bar this petition.

²⁹ Pet. For Writ of Mandamus at Ex. 1, D.I. 1.

³⁰ Defs.’ Mot. to Dismiss at 4-5, D.I. 18. Exhibit 4 of the motion to dismiss is Walley’s July 9, 2021 status sheet. It reflects 610 “Statutory Days Earned.” It is unclear what mix of good time credits that number represents.

³¹ *Id.* at Ex. 1.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

THEREFORE, Respondents' Motion to Dismiss Petition for Writ of Mandamus is **GRANTED**. Petitioner Lionel M. Walley's Petition for Writ of Mandamus is **DISMISSED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.