IN THE
SUPREME COURT OF VIRGINIA

Record No. 220665

STEVEN PATRICK PREASE,
Petitioner,

v.

HAROLD CLARKE, in his official capacity as Director of the Virginia Department of Corrections; and PHILLIP WHITE, in his official capacity as Warden of Dillwyn Correctional Center,
Respondents.

RESPONDENTS' MOTION TO DISMISS THE PETITION AND MEMORANDUM IN SUPPORT

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December 19, 2022

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INTRODUCTION

Petitioner Steven Prease plead guilty to two counts of attempted aggravated murder of a police officer and various other violent crimes, for which he was sentenced to fourteen years in prison. Petitioner asks this Court for a writ of habeas corpus on the ground that he is entitled to an early release for his attempted murder convictions. The Court should dismiss his petition.

Petitioner is not eligible for enhanced good time credits for his convictions for attempted aggravated murder of a law enforcement officer. The Code of Virginia does not enumerate a separate offense for attempted aggravated murder. Rather, attempted aggravated murder constitutes a type of violation of the aggravated murder statute, for which the Code separately provides penalties. Thus, Code § 53.1-202.3(A)'s provision that "any violation" of the aggravated murder statute is ineligible for enhanced sentence credits includes convictions for attempted aggravated murder. The General Assembly did not intend to shorten dramatically the sentences that attempted murderers are required to serve.

Petitioner's interpretation, under which solicitation to commit murder would be ineligible for enhanced credits but attempts to murder would be eligible, is not a reasonable one and is not compelled by the text of the statute. Indeed, Petitioner makes no attempt to explain why the General Assembly would have intended such an irrational result, instead contending only that this Court must give effect to the statute's plain text, even if "the legislature may have intended a different result." Pet. at 20. But Petitioner's strained reading of the text is not the correct one: subsection (A)'s plain text encompasses convictions for attempt as well as for the completed offense. Because Petitioner's sentence includes a crime covered by subsection (A) of Code § 53.1-202.3, he is ineligible to earn enhanced earned sentence credits.

EXHIBITS

Pursuant to Code § 8.01-660 and in accordance with Rule 5:7(a)(5), Respondents submit as Exhibit 1 an affidavit of Donna M. Shiflett, Manager of the Virginia Department of Corrections' (VDOC) Court and Legal Services Section. VDOC's Court and Legal Services Section is responsible for computing inmates' sentences and projecting the discretionary parole eligibility date, mandatory parole release date, and good-

time release date. ("Shiflett Aff."). Respondents request that this Court consider this affidavit and the accompanying enclosures as evidence in this matter.

STATEMENT

I. Virginia's Earned Sentence Credit System

Chapter 6 of Title 53.1 of the Code of Virginia governs computation of an inmate's term of confinement in state and local correction facilities, including defining when the term commences, providing credit for time spent in pre-trial detention, and establishing systems for awarding good time credit, which reduces the length of the sentence served.

Good time credit is applied to reduce the time the inmate must serve to satisfy the term of active incarceration imposed by the court. It is intended to provide an incentive for inmates to engage in constructive behavior and work toward rehabilitating themselves while incarcerated. See VDOC Operating Procedure 830.3, *Good Time Awards*. Different good time credit systems are available for different sentences, depending upon the date of the offense, and whether the offense is a felony or misdemeanor. And within each good time credit system, the inmate's

"class level" determines the rate at which the prisoner accrues good time credit. A prisoner is assigned a certain class level classification based on their institutional adjustment and behavior while incarcerated, with better performance earning a greater rate of credit accrual. Code §§ 53.1-201; 53.1-202.3(B); see also VDOC Operating Procedure 830.3, *Good Time Awards*. Shiflett Aff. ¶ 17, Enclosure F.

For felony offenses committed prior to January 1, 1995, and misdemeanor offenses committed after July 1, 2008, Code §§ 53.1-198 through 53.1-202.1 establish the Good Conduct Allowance (GCA) system. Under the GCA system, the available class levels provide that an inmate may earn a maximum of 30 days of credit for every 30 days served to a minimum of 0 days of good time for every 30 days served. Code § 53.1-201; VDOC Operating Procedure 830.3, *Good Time Awards*. Shiflett Aff. ¶ 17, Enclosure F.

For felony offenses committed on or after January 1, 1995, Code §§ 53.1-202.2 through 53.1-202.4 establish the earned sentence credit (ESC) system. Prior to July 1, 2022, the maximum amount of credit that could be awarded per 30-day period served under the ESC system was

4.5 days. Code § 53.1-202.3 (2021); VDOC Operating Procedure 830.3, *Good Time Awards*. Shiflett Aff. ¶ 17, Enclosure F.

On July 1, 2022, however, House Bill 5148 amending Code § 53.1-202.3 as it relates to the rates at which inmates can earn sentence credits for certain felony offenses became effective. 2020 Acts ch. 50 (Spec. Sess. I), https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0050+pdf. The amendments, which created a statutory four-tier class level system within the ESC system as well as a list of offenses exempt from that class level system, were intended to expand the availability of good time credits for less serious non-violent felonies, while leaving the prior system unchanged for more serious violent felonies. *Id.*

HB 5148 did not alter the prior maximum amount of sentence credits for felony sentences included in subsection (A) of section 53.1-202.3—4.5 days for every 30 days served (ESC-1 system). Code § 53.1-202.3; Shiflett Aff. ¶ 11, Enclosure F. The General Assembly chose to retain the previous maximum for the offenses included in subsection (A), which are more serious, primarily violent felonies such as

murder, robbery, kidnapping, and rape. See Code § 53.1-202.3(A)(1)–(17).

Inmates serving sentences for crimes *not* included in subsection (A), by contrast, are eligible to earn sentence credit under the new four-tier classification system set forth in subsection (B) and can earn a maximum of 15 days for every 30 days served (ESC-2 system). Code § 53.1-202.3; Shiflett Aff. ¶ 11, Enclosure F. The offenses covered by the new four-tier classification system are primarily less serious, non-violent felonies such as all drug offenses. Thus, the statute increased the rate at which inmates with less serious felonies could earn early release by demonstrating good conduct, while protecting the public from premature release of dangerous violent felons by continuing to restrict the amount of credits they are eligible to earn to the previous maximum of 4.5 days of credit per 30 days served. Code § 53.1-202.3.

Because the effective date of the amendment was not until July 1, 2022, VDOC could not change any inmate's official sentence computation before that date. Shiflett Aff. ¶ 12. Thus, prior to the amendments' effective date, no changes were made to any inmate's official sentence

computation.[1] *Id.* Nevertheless, anticipating the administrative burden and importance of accounting for HB 5148's changes, immediately upon passage of HB 5148, VDOC's Court and Legal Services Unit set out to identify inmates who *potentially* had recalculated release dates prior to July 1, 2022, and therefore would need to be released within 60 days of the effective date of the amendment. Shiflett Aff. ¶ 12. VDOC's efforts ensured that counseling staff could conduct reentry planning. Shiflett Aff. ¶ 13.

II. Petitioner's Sentence Computation

On November 14, 2013, Prease was sentenced in the Botetourt Circuit Court to an active term of incarceration totaling 14 years for the following three felony sentences and one misdemeanor sentence:

- Attempted Aggravated Murder of a Law Enforcement Officer in violation of Code § 18.2-31(6)
- Attempted Aggravated Murder of a Law Enforcement Officer in violation of Code § 18.2-31(6)

[1] On April 14, 2022, and again on June 24, 2022, VDOC's inmate population was informed by letters that were posted in every housing unit that any changes in sentence calculations resulting from the amendments to Code § 53.1-202.3 would not happen until July 1, 2022, and that any "effort by the counseling staff to develop home plans is the result of testing and preliminary calculations" because "audited and finalized calculations cannot occur until on and after 7/1/2022." Shiflett Aff. ¶ 12–15, Enclosures D and E.

- Use of a Firearm during the Commission of Felony in violation of Code § 18.2-53.1

- Misdemeanor Assault & Battery of a Family Member in violation of Code § 18.2-57.2(A)

Shiflett Aff. ¶ 4, Enclosure A (Copies of Prease's sentencing orders in Case Nos. CR12-515, CR12-516, CR12-517, and CR12-508).

Prease became a VDOC inmate on April 30, 2014. Shiflett Aff. ¶ 5. Prease's misdemeanor sentence is calculated under the GCA system. Because he committed his felonies after 1995, his three felony sentences are calculated under the ESC system. Prease must satisfy his ESC-eligible felony sentences before he may begin serving his GCA-eligible misdemeanor sentence. Shiflett Aff. ¶ 8.

When Prease became a VDOC inmate on April 30, 2014, he was assigned to ESC Class Level 1 and began earning 4.5 days good time credits for every 30 days served. Shiflett Aff. ¶ 10, Enclosures B & C. Because Prease's current term of incarceration includes sentences that fall within subsection (A) of section 53.1-202.3—two separate convictions for attempted Aggravated Murder of a Law Enforcement Officer in violation of section 18.2-31(6)—he is not eligible to earn sentence credit

at the accelerated rate in subsection (B) on any of his felony sentences. Shiflett Aff. ¶ 18, Enclosures B & C.

Prease has been assigned to various good time earning levels during his confinement. Prease is currently under the ESC-1 system in Class Level 1 and continues to earn the maximum 4.5 days good time credits for every 30 days served. When Prease finishes satisfying his ESC-eligible sentences he will begin serving his GCA-eligible misdemeanor sentence. Shiflett Aff. ¶ 18.

ARGUMENT

I. Code § 53.1-202.3(A) encompasses convictions for attempts to commit an enumerated offense and therefore Petitioner's convictions for attempted aggravated murder preclude him from earning enhanced sentence credit

In construing a statute, the "'plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction,' and a statute should never be construed in a way that leads to absurd results." *Ricks v. Commonwealth*, 290 Va. 470, 477 (2015) (quoting *Meeks v. Commonwealth*, 274 Va. 798, 802 (2007)) (internal citation omitted)). Furthermore, this Court presumes that "in choosing the words of the statute, 'the General Assembly acted with full

knowledge of the law in the area in which it dealt.'" *Turner v. Commonwealth*, 295 Va. 104, 109 (2018) (quoting *Philip Morris v. The Chesapeake Bay Found.*, 273 Va. 564, 576 (2007)). And this Court "will not apply an unreasonably restrictive interpretation of [a] statute that would subvert the legislative intent expressed therein." *Alger v. Commonwealth*, 267 Va. 255, 259 (2004) (internal citations omitted)

Here, Code § 53.1-202.3(A) provides that "*any* violation of § 18.2-32," the aggravated murder statute, is ineligible for enhanced good time credits. (Emphasis added). "[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Department of Housing and Urban Devel. v. Rucker*, 535 U.S. 125, 131 (2002); *see Massachusetts v. EPA*, 549 U.S. 497, 528 (2007) (observing that "any" is "sweeping" and "embraces all" versions of the modified term, "of whatever stripe"). In general, the Code of Virginia does not separately enumerate offenses of attempts to commit crimes. See *Fletcher v. Commonwealth*, 72 Va. App. 493, 506 (2020). While Code § 18.2-26 governs penalties for attempted crimes, it does not define the elements of the attempt offenses themselves. Rather, an attempt to

commit a crime is considered an inchoate version of the completed offense. See *id.*; see also *Stevens v. Commonwealth*, 38 Va. App. 528, 533 (2002) ("Code § 18.2-31(6) [criminalizes] the willful, deliberate, and premeditated killing of a law-enforcement officer . . . To prove an attempt of that offense, the Commonwealth must establish beyond a reasonable doubt that (1) the accused had the intent to commit capital murder and (2) made "some direct, but ineffectual, act toward its commission. . ."). "Any violation" of the aggravated murder statute therefore necessarily encompasses attempted aggravated murder.

"When interpreting statutes, courts "ascertain and give effect to the intention of the legislature." *Boynton v. Kilgore*, 271 Va. 220, 227 (2006) (quoting *Chase v. DaimlerChrysler Corp.*, 266 Va. 544, 547 (2003)). "That intent is usually self-evident from the words used in the statute." *Id.* Construing Code § 53.1-202.3(A) to encompass only completed enumerated offenses and exclude attempts is would effectively read "any" right out of the statute.

Petitioner suggests that a plain reading of the text of Code § 53.1-202.3(A) unambiguously encompasses only completed enumer-

ated offenses and intentionally excluded attempts to commit those offenses, as well as solicitations of those offenses or conspiracies to commit enumerated offenses. Pet.'s Mem. Supp. at 11–13. But such an interpretation requires a strained and narrow reading of the text because it ignores the "cardinal rule of statutory construction" that "[w]e construe statutory language in the context of the entire statute." *Blake v. Commonwealth*, 288 Va. 375, 381–85 (2014). Here, the General Assembly created a graduated statutory scheme making more serious and violent offenses ineligible for enhanced credit, while providing less serious and non-violent offenses the benefit of the enhanced earned credit system. See Statement Section I, *supra*. Aggravated attempted murder is plainly a serious violent felony. It is, indeed, an attempt to commit a murder for which the Commonwealth prescribed the death penalty until 2021. Code § 18.2-31(2020). This Court should reject Petitioner's argument that it nonetheless qualifies for enhanced credits leading to the early release, and instead "apply the interpretation that will carry out the legislative intent behind the statute." *Boynton*, 271 Va. at 227 n.9 (2006).

The statute's treatment of solicitation for murder makes especially clear that Petitioner's interpretation would lead to "irrational consequences." *VEPCO v. Citizens for Safe Power*, 222 Va. 866, 869 (1981) (stating that we "presume that the General Assembly does not intend the application of a statute to lead to irrational consequences"). Code § 53.1-202.3(A)(2) lists "[s]olicitation to commit murder under § 18.2-29" as an offense that is ineligible for enhanced credits. Yet solicitation is plainly a less serious and dangerous crime than attempt, requiring only an attempt to incite another to commit the underlying offense, rather than actual overt acts by the defendant towards carrying out the underlying offense. See *Fletcher*, 72 Va. App. at 506. It would be the epitome of a "strained" construction to read the phrase in subsection (A)(2) "any violation of" as referring only to the completed crime, because it would lead to the irrational conclusion that the General Assembly intended to make solicitation to commit murder *ineligible* for enhanced earned sentence credits yet left convictions for conspiracies or actual attempts to commit murder *eligible* to earn enhanced earned sentence credits. See *Jacobs v. Wilcoxson*, 71 Va. App. 521, 526 (2020) ("[W]hile we look at

the words of the statue to determine legislative intent, we will not interpret a statute in a way that leads to unreasonable or absurd results."). Such an interpretation of the text of the statute would render it "internally inconsistent." *Butler v. Fairfax Cty. Sch. Bd.*, 291 Va. 32, 37 (2015).

Other features of the ESC system demonstrate the irrationality of petitioner's reading. An inmate sentenced to two of the offenses enumerated in Code § 53.1-202.3(A)(17) is flatly ineligible for earned enhanced sentence credits. Such offenses include two convictions for breaking and entering a dwelling house with intent to commit misdemeanors, Code § 53.1-202.3(A)(17)(g); burning an object on a highway with the intent to intimidate, Code § 53.1-202.3(A)(17)(i); and withholding wages, Code § 53.1-202.3(A)(17)(j). Under petitioner's interpretation, then, an inmate twice convicted of attempting to murder a police officer could earn enhanced sentence credits, but an inmate twice convicted of withholding wages could not.

Petitioner makes no attempt to explain why the General Assembly would have intended these irrational results. Instead, Petitioner argues

only that "[e]ven when a Court believes the legislature may have intended a different result, the Court is still bound to the plain meaning of the statute." Pet.'s Mem. Supp. at 20. But this argument fails because Petitioner misinterprets the "plain meaning of the statute." *Id.* In excluding "any violation" of the aggravated murder statute from enhanced sentence credits, the statute excludes attempted aggravated murder as well as completed murders. See pp. 10–11, *supra*.

Reading Code § 53.1-202.3 in its entirety, and in light of related statutes, an individual who willfully and intentionally attempts to commit aggravated murder, but by luck or happenstance is unsuccessful in completing his endeavor, does not receive the benefit of enhanced earned sentence credit. Convictions for attempted aggravated murder, such as Petitioner's, are included in the scope of Code § 53.1-202.3(A) in order to avoid construing the statute "in a way that leads to absurd results." *Ricks*, 290 Va. at 477; see *Blake*, 288 Va. at 381 (holding that courts cannot apply the plain language if it would lead to an absurd result); 2A *Sutherland Statutory Construction* § 45:12 (7th ed. 2022) (observing that "a golden rule of statutory interpretation instructs that, when one of several possible interpretations of an ambiguous statute

produces an unreasonable result, that interpretation should be rejected in favor of another which produces a reasonable result," and "courts may employ a variant of the 'reasonableness' rule even absent ambiguity, but, instead, when an act's plain, clear, literal meaning produces an unintended, absurd result").

II. The inclusion of specific "stand-alone" inchoate offenses in Code § 53.1-202.3(A) does not reflect an intent to exclude inchoate offenses of enumerated completed offenses, nor does it render the inclusion of those meaningless and superfluous

Petitioner's argument that Code § 53.1-202.3(A)'s express reference to certain inchoate offenses demonstrates that the General Assembly did not intend to include any other inchoate offenses also fails. Pet.'s Mem. Supp. at 13–16. Again, the Code of Virginia does not separately enumerate most inchoate offenses; instead, they are treated as types of violations of the underlying offense. See Argument Section I, *supra*. The General Assembly has, however, separately enumerated certain inchoate offenses. The fact that the General Assembly separately included such enumerated inchoate offenses only further undermines Petitioner's interpretation, by demonstrating that the General Assembly did not intend to allow enhanced credits for inchoate crimes that are serious violent felonies.

Generally, an attempt, solicitation, or conspiracy to commit completed offenses are not defined independently from the completed offense. Rather the Code provides only how attempts, solicitation, and conspiracy to commit completed crimes defined in Title 18.2 should be punished in relation to the classification of the completed criminal offense. See generally Code §§ 18.2-22 through 18.2-29. For example, there is no stand-alone criminal offense titled "Attempted Murder of a Pregnant Woman" in the Code, only the completed offense of "Murder of a Pregnant Woman." See Code § 18.2-32.1. Code § 18.2-26 provides how attempts to commit all non-Class 1 felonies should be punished—including attempted Murder of a Pregnant Woman in violation of Code § 18.2-32.1. An individual cannot be arrested, convicted, and sentenced for a violation of Code § 18.2-26 alone, because it alone is not a criminal offense. Consequently, the General Assembly did not specifically enumerate each of the inchoate offenses encompassed in subsection (A), because those offenses are not separately enumerated in the Virginia Code and are instead encompassed by reference to the underlying enumerated offense.

By contrast, the General Assembly has separately criminalized an attempt to engage in specific conduct. Punishment for those separately enumerated attempt offenses is not governed by Code § 18.2-26. For example, Code § 18.2-54.1 defines the act and the penalty for the criminal offense of "Attempts to poison." Subsection (A) of section 53.1-202.3 explicitly lists violations of Code § 18.2-54.1 as ineligible for enhanced earned sentence credits. The fact that the General Assembly explicitly listed "stand-alone" inchoate offenses in subsection (A) does not demonstrate an intent to exclude all inchoate offenses of enumerated completed offenses as Petitioner suggests, but rather demonstrates an intent to specifically include certain "stand-alone" inchoate offenses which

by themselves are a criminal offense.[2] Petitioner's use of the "negative-implication canon of statutory constriction" is therefore misplaced.[3]

For these same reasons, interpreting subsection (A) to encompass convictions for attempts, solicitation, and conspiracy to commit enumerated offenses in subsection (A) would not render references to the explicitly listed "stand-alone" inchoate offenses meaningless. Without their express enumeration, the inchoate offenses that have been explicitly defined by the General Assembly as standalone offenses arguably

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[2] See, *e.g.*, Code § 53.1-202.3(A)(17)(e)(including violations of Code § 18.2-54.1, for "Attempts to poison"); Code § 53.1-202.3(A)(17)(d) (including felony violations of Code § 18.2-46(B) by any person who "conspires to commit, or aids and abets the commission of an act of terrorism," and § 18.2-46(C) by any person who "solicits, invites, recruits, encourages, or otherwise causes or attempts to cause another to participate in an act or acts of terrorism"); Code § 53.1-202.3(A)(17)(e)(including felony violations of Code § 18.2-67.5, for "Attempted rape, forcible sodomy, object sexual penetration, [and] aggravated sexual battery"); Code § 53.1-202.3(A)(5)(for felony violations of Code § 18.2-49 by any person who "attempts to abduct any other person with intent to extort money, or pecuniary benefit").

[3] Furthermore, Petitioner's argument highlighting differences between the lists in Code § 53.1-202.3(A) and Code § 53.1-40.02(C) does not "further" demonstrate the General Assembly's intent to an intent to exclude inchoate offenses of enumerated completed offenses—rather, it supports Respondent's position that the General Assembly intended to specifically include certain "stand-alone" inchoate offenses which by themselves are a criminal offenses. See Pet. Mem. Supp. at 16 n.3.

would not otherwise fall within the exclusion of subsection (A). Petitioner is therefore incorrect that the inclusion of convictions for attempts, conspiracy, or solicitation of all enumerated offenses, "would make the explicit references to various inchoate offenses wholly superfluous." Pet.'s Mem. Supp. at 17–18. The explicitly listed "stand-alone" inchoate offenses operate independently to exclude offenses that would otherwise be left unaddressed in subsection (A) because the General Assembly has defined them as standalone crimes rather than as a species of the underlying, completed offense. They are therefore not mere surplusage.

CONCLUSION

For the foregoing reasons, Prease fails to identify any manner in which he is being unlawfully or unconstitutionally confined by Respondents or denied any constitutional right resulting in his continued detention. Prease has received all appropriate sentence credits, and his time has been accurately calculated in accordance with applicable Virginia statutes and time-computation practices. Accordingly, Prease's petition for a writ of habeas corpus is without merit and should be denied and dismissed by this Court.

In accordance with Rule 5:7(b)(6) of the Rules of the Supreme Court of Virginia, Respondent submits that this Court may deny and dismiss this petition as a matter of law without requiring an evidentiary hearing. See also Code § 8.01-654(B)(4); Code § 8.01-695.

Respectfully submitted,

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December 19, 2022

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CERTIFICATE

I certify that on December 19, 2022, this document was filed electronically with the Court through VACES. This brief complies with Rule 5:7(a)(7) because the portion subject to that rule does not exceed the longer of 50 pages or 8,750 words. Copies were electronically mailed to:

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