

IN THE  
SUPREME COURT OF VIRGINIA

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RECORD NO. 23-0514

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**JOSE ISAIS GARCIA VASQUEZ**

*Petitioner,*

v.

**CHADWICK DOTSON**, in his official capacity as Director of the Virginia Department of Corrections; and **TONY DARDEN**, in his official capacity as Warden of Haynesville Correctional Center,

*Respondents.*

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**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

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**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW the Petitioner, Jose Isais Garcia Vasquez, State ID # 1810244, by and through counsel, and respectfully submits his Amended Petition for a Writ of Habeas Corpus seeking relief from his unlawful detention, having been wrongfully denied earned sentence credits that, if awarded, would result in his immediate release from incarceration. In support of his petition, Mr. Garcia Vasquez states the following:

**INTRODUCTION**

1. This action arises out of the Virginia Department of Corrections' (VDOC) erroneous interpretation of Va. Code Ann. § 53.1-202.3(A) to apply to inchoate offenses that are not specifically listed in that subsection. By virtue of the 2020 legislative expansion of the earned sentence credit program, Mr. Garcia Vasquez has earned sufficient sentence credits during his incarceration to be released from VDOC custody in approximately November, 2022.<sup>1</sup> However, as a result of the VDOC's misapplication and misinterpretation of § 53.1-202.3(A), the Petitioner is facing over an additional year of imprisonment, and VDOC now lists his projected release date as February 19, 2025.

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<sup>1</sup> Because the formula used by VDOC to calculate time served, jail credit, and earned sentence credit is not publicly available, it is not possible to definitively calculate the date on which Petitioner would have been released if awarded enhanced sentence credits pursuant to Va. Code Ann. § 53.1-202.3.

2. This Petition presents no disputed material facts and a purely legal question, and thus, the taking of evidence in this matter is not necessary, and this Court may make a determination on the merits on the basis of the record. *See* Va. Code Ann. § 8.01-654(B)(4) (“In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.”); Va. S.Ct. Rules 5:7(a)(2).

### **JURISDICTION**

3. This Court has original jurisdiction to hear this Petition pursuant to Va. Code Ann. § 17.1-310 and Rule 5:7(a) of the Rules of the Supreme Court of Virginia.

### **PARTIES**

4. Petitioner, Jose Garcia Vasquez, is currently incarcerated at Haynesville Correctional Center in Haynesville, Virginia. He is serving an active sentence on convictions entered in the Circuit Court of Prince William County as follows:

<b>Case Number</b>	<b>Offense</b>	<b>Code Section</b>	<b>Sentence</b>
CR16001917-00	Conspiracy to Commit 1 <sup>st</sup> Degree Murder	18.2-22 18.2-32	10 years, 5 suspended
CR16002008-00	Criminal Gang Participation	18.2-46.2	10 years, 5 suspended

Those sentences run consecutively; he therefore has a total of 10 years to serve.

True and correct copies of Mr. Garcia Vasquez's plea agreements and sentencing orders are attached as Exhibits 1-3.

5. Mr. Garcia Vasquez was convicted after entering guilty pleas and did not appeal his convictions or sentence. Other than the original Petition in this case, Mr. Garcia Vasquez has not previously filed any habeas petitions challenging the convictions listed above or the conditions of his confinement.<sup>2</sup>

6. Respondent Chadwick Dotson is the Director of the Virginia Department of Corrections and is named in his official capacity. Director Dotson is ultimately responsible for the policies and procedures of the VDOC regarding the implementation of the earned sentence credit program.

7. Respondent Tony Darden is the Warden of the Haynesville Correctional Center and is named in his official capacity. Warden Darden is ultimately responsible for the implementation of the earned sentence credit program as to individuals incarcerated at the Haynesville Correctional Center.

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<sup>2</sup> Given that this Petition does not challenge Mr. Garcia Vasquez's underlying convictions or sentence, and only challenges his continued detention in light of statutory amendments to the earned sentence credit program, Petitioner has not at this stage provided a complete record of the proceedings below, but has attached the portions of the record that are relevant to this Petition. A formal Motion for Leave to Proceed with Less than Complete Record pursuant to Rule 5:7(a)(6) of the Supreme Court of Virginia will be forthcoming upon the Respondents' response.

## FACTUAL BACKGROUND

8. Most incarcerated individuals in VDOC custody are eligible to earn reductions in their original sentence for demonstrating good behavior and participating in certain rehabilitative programs. Va. Code Ann. § 53.1-202.3. Prior to July 1, 2022, an incarcerated person could earn a maximum of 4.5 “earned sentence credits”<sup>3</sup> for every 30 days served. *Id.* This system applied to anyone convicted of a felony offense committed on or after January 1, 1995.

9. As a result of his felony convictions, Mr. Garcia Vasquez was committed to the custody of VDOC on July 1, 2021, with a Custody Redetermination Date of July 14, 2020. *See* Exhibit 4, October 1, 2021 Legal Update. He was therefore eligible to participate in the earned sentence credit program. *See* Va. Code Ann. § 53.1-202.2(A); Virginia Department of Corrections Operating Procedure 830.3, effective July 1, 2022 (hereinafter “OP 830.3” and attached as Exhibit 5).

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<sup>3</sup> The terms “sentence credit” and “earned sentence credit” are defined as “deductions from a person’s term of confinement earned through adherence to rules prescribed pursuant to § 53.1-25, through program participation as required by §§ 53.1-32.1 and 53.1-202.3, and by meeting such other requirements as may be established by law or regulation. One earned sentence credit shall equal a deduction of one day from a person’s term of incarceration.” Va. Code Ann. § 53.1-202.2(A).

10. In 2020, Virginia’s General Assembly amended the earned sentence credit program to provide greater incentives for incarcerated people to pursue opportunities for growth and personal improvement, and to recognize those who had already done so during their sentences. 2020 Va. Acts Spec. Sess. I, chs. 50, 52 (hereinafter “H.B. 5148”). Under the new law, many incarcerated people are eligible for significantly expanded earned sentence credits. Eligibility for expanded credits is determined based on one’s conviction: individuals serving sentences for certain enumerated felony convictions remain eligible for a maximum of 4.5 earned sentence credits for every 30 days served. Va. Code Ann. § 53.1-202.3(A). Individuals serving sentences for any other conviction are now eligible to earn as many as 15 sentence credits for every 30 days served. Va. Code Ann. § 53.1-202.3(B). The rate at which all individuals earn sentence credits is based on a classification scheme. *Id.*<sup>4</sup> Classification levels are assigned based on an

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<sup>4</sup> Under the old system, individuals classified as Level I are eligible for 4.5 earned sentence credits (ESCs) for every 30 days served; those classified as Level II are eligible for 3 ESCs for every 30 days served; those classified as Level III are eligible for 1.5 ESCs for every 30 days served; and those classified as Level IV are eligible for 0 ESCs for every 30 days served. For those eligible for expanded credits under the new scheme, individuals classified as Level I are eligible for 15 ESCs for every 30 days served; those classified as Level II are eligible for 7.5 ESCs for every 30 days served; those classified as Level III are eligible for 3.5 ESCs for every 30 days served; and those classified as Level IV are eligible for 0 ESCs for every 30 days served.

individual's employment status, behavior, and participation in programs and treatment. *Id.*

11. These provisions became effective on July 1, 2022. However, the General Assembly explicitly applied the law retroactively, so that those currently incarcerated would have the benefit of these expanded earned sentence credits for the totality of their sentences prior to the effective date of the law. The enactment clause to H.B. 5148 provides:

That the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, ***shall apply retroactively to the entire sentence*** of any person who is confined in a state correctional facility and participating in the earned sentence credit system on July 1, 2022. If it is determined that, upon retroactive application of the provisions of § 53.1-202.3 of the Code of Virginia, as amended by this act, the release date of any such person passed prior to the effective date of this act, the person shall be released upon approval of an appropriate release plan and within 60 days of such determination unless otherwise mandated by court order.

H.B. 5148(1)(D) (emphasis added). The delay between the enactment of the law and the effective date was intended to give VDOC time to implement the new system and re-calculate the sentences of those eligible for additional sentence credits.

12. On December 21, 2021, Attorney General Mark R. Herring released an Opinion in response to questions from Harold Clarke, then-Director of VDOC. Va. Off. Att'y Gen. Op. No. 21-068 (Dec. 21, 2021), 2021 WL 6112902 at \*1 (hereinafter the "Herring Opinion" and attached as Exhibit 6). Each of those

questions related to the interpretation and application of Va. Code Ann. § 53.1-202.3(A). All of the questions asked about which offenses were disqualified from earning expanded earned sentence credits, including whether inchoate offenses were disqualified even if not specifically enumerated in the statute. Attorney General Herring provided a full response. Notably, Attorney General Herring interpreted Va. Code Ann. § 53.1-202.3(A) to conclude that the inchoate offenses of solicitation, conspiracy, and attempt qualify for the expanded earned sentence credits under Va. Code Ann. § 53.1-202.3(B), unless such offenses are explicitly enumerated in Va. Code Ann. § 53.1-202.3(A).

13. Subsequent to the change in administration in January 2022, VDOC requested a reconsideration of the exact same questions from the new Attorney General. On April 13, 2022, Attorney General Miyares issued a new opinion, which differed from the Herring Opinion in significant parts. Va. Off. Att’y Gen. Op. No. 22-008 (Apr. 13, 2022), 2022 WL 1178995 at \*1 (hereinafter the “Miyares Opinion” and attached hereto as Exhibit 7). As relevant to this case, Attorney General Miyares reached the opposite conclusion from the Herring Opinion on whether the inchoate offenses of solicitation, conspiracy, and attempt should be disqualified under Va. Code Ann. § 53.1-202.3(A) from earning the expanded earned sentence credits under Va. Code Ann. § 53.1-202.3(B). He concluded that those inchoate offenses are encompassed in the term “any felony violation” as used



in Va. Code Ann. § 53.1-202.3(A), and are thus disqualified from earning the expanded sentence credits.

14. On July 6, 2023, this Court issued its opinion in *Prease v. Clarke*, 888 S.E.2d 758, 760 (Va. 2023), in which it reasoned that unless an offense is specifically enumerated in Va. Code Ann. § 53.1-202.3(A), it is eligible for enhanced sentence credits.

15. As demonstrated by Mr. Garcia Vasquez's case, VDOC has relied on the Miyares Opinion to exclude Mr. Garcia Vasquez's conspiracy conviction from eligibility for expanded earned sentence credits and has failed to apply this Court's ruling in *Prease* to Mr. Garcia Vasquez. This interpretation of the statute does not comport with fundamental rules of statutory construction and is erroneous.

16. Neither of Mr. Garcia Vasquez's convictions are specifically listed in Va. Code Ann. § 53.1-202.3(A) as ones that are excluded from earning expanded earned sentence credits. Conspiracy to commit murder is neither specifically enumerated in that subsection nor encompassed in the chapters and titles of the criminal code that are specifically enumerated in that subsection. Mr. Garcia Vasquez's other conviction (criminal gang participation) is not listed in Va. Code Ann. § 53.1-202.3(A), and there is no dispute that Mr. Garcia Vasquez would otherwise be eligible to earn expanded earned sentence credits on those sentences.

17. Mr. Garcia Vasquez has maintained classification Level I throughout his term of incarceration. Accordingly, upon the effective date of the amended Va. Code Ann. § 53.1-202.3, he should have been awarded earned sentence credits at a rate of 15 days for every 30 served over the course of his entire sentence. However, under VDOC's current interpretation of the law, Mr. Garcia Vasquez has been denied expanded earned sentence credits because of his conviction for conspiracy to commit murder.

18. Mr. Garcia Vasquez has been incarcerated for over 7 years, including one year in a juvenile detention facility and approximately four years in the Prince William County Jail prior to his transfer to VDOC custody. In that time, he has taken numerous actions through which he has earned sentence credits. He has completed his GED and is now enrolled in college courses, working towards his associates' degree. He is also enrolled in an electrician training course, which is a full-day course four days per week. He completes his college work during the evenings, and maintains a part-time job buffing the floors. He has renounced his gang membership and has had no serious disciplinary infractions while incarcerated.

19. Mr. Garcia Vasquez has maintained a close relationship with his young daughter, who was born shortly after his arrest and incarceration, through video and phone calls. He looks forward to seeing her in person for the first time,

providing for her financially through work as an electrician, and fully participating in her life.

### **CLAIM I**

#### **Mr. Garcia Vasquez's Continued Detention is Unlawful Because Inchoate Offenses, Unless Explicitly Enumerated in § 53.1-202.3(A), Are Eligible for Expanded Earned Sentence Credits**

20. Each of the preceding paragraphs are incorporated and reiterated herein by reference. As set out more fully in the accompanying Memorandum of Law in Support of this Petition (also incorporated by reference), conspiracy to commit murder is not disqualified from receiving expanded earned sentence credits under Va. Code Ann. § 53.1-202.3(B), because it is not specifically listed in Va. Code Ann. § 53.1-202.3(A). Under long-standing principles of statutory construction that have been stated and restated by the Virginia Supreme Court, Va. Code Ann. § 53.1-202.3(A) cannot be read to implicitly include the inchoate offense of attempted murder. Therefore, Mr. Garcia Vasquez is eligible to earn expanded sentence credits on those convictions.

21. Accordingly, this Court should find that the VDOC is required to award Mr. Garcia Vasquez the sentence credits he has earned under Va. Code Ann. § 53.1-202.3. Doing so will result in Mr. Garcia Vasquez having served his entire active sentence, rendering his continued detention “without lawful authority.” Va. Code Ann. § 8.01-654(A)(1).

22. “Habeas corpus is a writ of inquiry granted to determine whether a person is illegally detained.... In other words, a prisoner is entitled to immediate release by habeas corpus if he is presently restrained of his liberty without warrant of law.” *Smyth v. Midgett*, 199 Va. 727, 730, 101 S.E.2d 575, 578 (1958). Habeas relief is available whenever “an order entered in the petitioner’s favor will result in a court order that, on its face and standing alone, will directly impact the duration of the petitioner’s confinement.” *Carroll v. Johnson*, 278 Va. 683, 693, 685 S.E.2d 647, 652 (2009).

23. The VDOC’s erroneous interpretation and application of Va. Code. Ann. § 53.1-202.3 directly impacts the duration of Mr. Garcia Vasquez’s confinement, and a correction of that error would result in his immediate release. Thus, this Court should grant the relief requested herein.

24. Petitioner respectfully requests that this Court expedite its consideration of this matter, and waives oral argument, as these legal issues have been briefed and argued in *Prease v. Clarke*.

## **PRAYER FOR RELIEF**

WHEREFORE, Petitioner Jose Garcia Vasquez moves this Court to grant him relief as follows:

- A. Order the VDOC to award him earned sentence credits as provided in Va. Code Ann. § 53.1-202.3(B) both prospectively and retroactively as to each of his sentences;
- B. Grant his petition for a writ of habeas corpus and order his immediate release; and
- C. Order any other relief as may be just and proper.

RESPECTFULLY SUBMITTED,  
JOSE GARCIA VASQUEZ  
By Counsel:



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CITY/COUNTY OF Richmond

The Petitioner being first duly sworn, says:

1. He has reviewed the foregoing petition for writ of habeas corpus.
2. The facts stated in the petition are true to the best of his information and belief.

[Signature]  
Signature of Petitioner

Subscribed and sworn to before me this 22<sup>nd</sup> day of September 2023



Sharmayne Daye Manning  
Notary Public

My commission expires 5/31/2026