

**IN THE
SUPREME COURT OF VIRGINIA**

RECORD NO. _____

LESLIE L. PURYEAR

Petitioner,

v.

CHADWICK DOTSON, in his official capacity as Director of the Virginia Department of Corrections; and **MACK BAILEY**, in his official capacity as Warden of Lunenburg Correctional Center,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

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PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Leslie L. Puryear, State ID #1387533, by and through counsel, and respectfully submits his 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. Puryear 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 enumerated in that subsection. By virtue of the 2020 legislative expansion of the earned sentence credit program, Mr. Puryear earned sufficient sentence credits during his incarceration to be released from VDOC custody in approximately July 2022. However, as a result of VDOC's misapplication and misinterpretation of § 53.1-202.3(A), Mr. Puryear is facing additional years of imprisonment, and VDOC now projects his release date as April 21, 2025.

2. This Petition presents no disputed material facts and a purely legal question; the taking of evidence is therefore unnecessary. This Court can 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, Leslie L. Puryear, is currently incarcerated at Lunenburg Correctional Center. He is serving an active sentence on convictions entered in the Petersburg and Mecklenburg Circuit Court as follows:

Case Number	Offense	Offense Date	Code Section	Sentence	Court
CR06A00514-00	Probation Violation	06/24/2010	19.2-306	5 years	Mecklenburg
CR06A00514-01	Probation Violation	06/24/2010	19.2-306	5 years	Mecklenburg
CR10000975-00	Use of Firearm in Commission of a Felony	04/26/2010	18.2-53.1	3 Years, consecutive with others	Petersburg
CR10000976-00	Attempts to Rob	04/26/2010	18.2-58; 18.2-26	40 Years; 35 suspended, consecutive with others	Petersburg

Those sentences run consecutively; Mr. Puryear therefore has a total of 18 years to serve. A true and correct copy of Mr. Puryear's sentencing order is attached as Exhibit 1.

5. Mr. Puryear has not previously filed any habeas petitions challenging the convictions listed above or the conditions of his confinement.¹

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 Mack Bailey is the Warden of the Lunenburg Correctional Center and is named in his official capacity. Warden Bailey is ultimately responsible for the implementation of the earned sentence credit program as to individuals incarcerated at the Lunenburg Correctional Center.

¹ Given that this Petition does not challenge Mr. Puryear'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 are eligible to earn reductions in their original sentences for demonstrating good behavior and participating in rehabilitative programs. Va. Code Ann. § 53.1-202.3. Before July 1, 2022, an incarcerated person could earn a maximum of 4.5 “earned sentence credits”² for every 30 days served. *Id.* This system applied to anyone with a felony offense committed on or after January 1, 1995.

9. Mr. Puryear was sentenced and committed to VDOC custody on January 11, 2011, well after the effective date for the earned sentence credit program and was eligible to participate in that program. *See* Va. Code Ann. § 53.1-202.2(A); Virginia Department of Corrections Operating Procedure 830.3, effective July 1, 2022 (“OP 830.3” and attached as Exhibit 2).

10. In 2020, Virginia’s General Assembly amended the earned sentence credit program to better incentivize incarcerated people to pursue personal improvement opportunities and to recognize those that had already done so during their sentences. 2020 Va. Acts Spec. Sess. I, chs. 50, 52 (“H.B. 5148”). Under the

² “Sentence credit” and “earned sentence credit” are “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).

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.*³ Classification levels are assigned based on an individual's employment status, behavior, and participation in programs and treatment. *Id.* This new scheme also removes some of the discretion that VDOC has for awarding credits, instead conditioning credits on specific criteria that individuals must meet. *Id.*

11. These provisions became effective on July 1, 2022. The General Assembly explicitly applied the law retroactively so that those currently incarcerated

³ 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.

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, former 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 3). 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 4). 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. VDOC, in accord with the Herring Opinion, notified Mr. Puryear that he had been awarded the expanded credits and assisted him in completing re-entry counseling and contacting his family. However, months after the Miyares Opinion was released, VDOC subsequently declined to release Mr. Puryear or award him his

earned sentence credits. Mr. Puryear had no intervening disciplinary charges, maintaining GCA Level 1 throughout his incarceration, entitling him to the expanded credits. Miyares and VDOC's erroneous interpretation of the statute is the sole reason for his continued detention. 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. VDOC has relied on the Miyares Opinion to bar Mr. Puryear from eligibility from expanded earned sentence credits and has failed to apply this Court's ruling in *Prease* to Mr. Puryear. But the Miyares Opinion conflicts with *Prease* and does not comport with fundamental rules of statutory construction.

16. Mr. Puryear's convictions are not listed in Va. Code Ann. § 53.1-202.3(A) as excluded from earning expanded earned sentence credits. Attempted robbery is not specifically enumerated in that subsection, nor is attempted robbery encompassed in the chapters and titles of the criminal code that are specifically enumerated in that subsection. None of Mr. Puryear's other sentences (use of a firearm in commission of a felony, accessory after the fact, and two parole violations) are listed in the statute.

17. Mr. Puryear has been incarcerated for more than 13 years, and he has maintained GCA Level 1 classification for more than 10 years, since shortly after

entering the VDOC system, entitling him to the maximum number of credits (15 credits per 30 days served). He is currently incarcerated at Lunenburg Correctional Center.

18. Mr. Puryear has worked hard to earn sentence credits in the time he has been incarcerated. He has completed mental health and job readiness programs, including Thinking for A Change and Ready for Work Skill Training. He has received twelve certifications, including a ServSafe Certification and VCT Flooring Certification. While at Baskerville Correctional Center, Mr. Puryear worked outside the gate as a lead crew member. Mr. Puryear has never had a serious disciplinary infraction while incarcerated.

19. Mr. Puryear and his wife have four children who are eagerly waiting for his return. He has missed his son's high school graduation and his grandchild's birth, and he looks forward to being with them in the stable home situation that is waiting for him upon release. Mr. Puryear also looks forward to working when he is released, and the training he has received and discipline and work ethic he has displayed while incarcerated make him well-equipped to adapting to being released.

CLAIM I

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

20. Each of the preceding paragraphs are incorporated and reiterated herein by reference. As set out in the accompanying Memorandum of Law in Support of this Petition (also incorporated by reference), attempted robbery 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). Based on the Virginia Supreme Court's decision in *Prease v. Clarke* and longstanding principles of statutory construction, Va. Code Ann. § 53.1-202.3(A) cannot be read to implicitly include the inchoate offense of attempted robbery. Therefore, Mr. Puryear is eligible to earn expanded earned sentence credits on his convictions.

21. Accordingly, this Court should find that VDOC must award Mr. Puryear the sentence credits he has earned under Va. Code Ann. § 8.01-654(A)(1). Doing so will result in Mr. Puryear 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. Puryear’s confinement, and a correction of that error would result in his immediate release. Thus, this Court should grant the relief requested herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Leslie L. Puryear 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,

LESLIE L. PURYEAR

By Counsel:



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**Pro Hac Vice Pending*

CITY/COUNTY OF Lunenburg

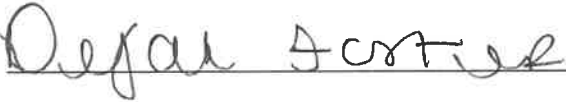
The Petitioner being first duly sworn, says:

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 of Petitioner

Subscribed and sworn to before me this 21st day of September, 2023.



Notary Public

My commission expires 10/31/2027

