

IN THE
SUPREME COURT OF VIRGINIA

RECORD NO. _____

STEVEN PATRICK PREASE

Petitioner,

v.

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

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Geri M. Greenspan (VSB No. 76786)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA, INC.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 491-8584
Fax: (804) 649-2733
ggreenspan@acluva.org

Vishal Agraharkar, (VSB No. 93265)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA, INC.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8022
Fax: (804) 649-2733
vagraharkar@acluva.org

PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, Steven Patrick Prease, State ID # 1500498, 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. Prease 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. Prease has earned sufficient sentence credits during his incarceration to be released from VDOC custody between July 1 and August 30, 2022. However, as a result of the VDOC's misapplication and misinterpretation of § 53.1-202.3(A), the Petitioner is facing an additional 23 months of imprisonment, and VDOC now lists his projected release date as June 4, 2024.

2. This cause of action accrued on July 1, 2022, the date on which VDOC was to have applied the expanded earned sentence credits to Mr. Prease's sentence. 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, Steven Patrick Prease, is currently incarcerated at Dillwyn Correctional Center in Dillwyn, Virginia. He is serving an active sentence on convictions entered in the Circuit Court of Botetourt County as follows:

Case Number	Offense	Code Section	Sentence
CR12000515-00	Attempted Murder of a Law Enforcement Officer	18.2-25, 18.2-31	30 years, 25 suspended
CR12000516-00	Attempted Murder of a Law Enforcement Officer	18.2-25, 18.2-31	30 years, 25 suspended
CR12000517-00	Use of a Firearm in the Commission of a Felony	18.2-53.1	3 years
CR12000508-00	Misdemeanor Assault and Battery	18.2-57.2	12 months

Those sentences run consecutively; he therefore has a total of 14 years to serve. True and correct copies of Mr. Prease's conviction orders are attached as Exhibits 1-4. True and correct copies of Mr. Prease's sentencing orders are attached as Exhibits 5-8.

5. Mr. Prease was convicted after entering pleas under *Alford v. North Carolina*, 400 U.S. 25 (1970), and did not appeal his convictions or sentence. A true and correct copy of Mr. Prease's plea agreement is attached as Exhibit 9. Mr. Prease has not previously filed any habeas petitions challenging the convictions listed above or the conditions of his confinement.¹

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

7. Respondent Phillip White is the Warden of the Dillwyn Correctional Center and is named in his official capacity. Warden White is ultimately

¹ Given that this Petition does not challenge Mr. Prease'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.

responsible for the implementation of the earned sentence credit program as to individuals incarcerated at the Dillwyn Correctional Center.

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”² 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. Prease was committed to the custody of VDOC on November 14, 2013. 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 10).

² 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.*³ Classification levels are assigned based on an

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.

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 expended 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, 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 11). 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 12). 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. As demonstrated by Mr. Prease's case, VDOC has relied on the Miyares Opinion to exclude Mr. Prease's attempt convictions from eligibility for expanded earned sentence credits. However, this interpretation of the statute does not comport with fundamental rules of statutory construction and is erroneous.

15. Mr. Prease's convictions are not specifically listed in Va. Code Ann. § 53.1-202.3(A) as ones that are excluded from earning expanded earned sentence credits. Attempted 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. Neither of Mr. Prease's other convictions (use of a firearm in the commission of a felony and misdemeanor assault and battery) are listed in Va. Code Ann. § 53.1-202.3(A), and there is no dispute that Mr. Prease is eligible to earn expanded earned sentence credits on those sentences.

16. Mr. Prease has maintained classification Levels I or II 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 between 7.5 and 15 days for every 30 served over the course of his entire sentence. However, under VDOC's current interpretation of the law, Mr. Prease

has been denied expanded earned sentence credits on his convictions for attempted murder.

17. Mr. Prease was initially notified that his sentence would be recalculated in accordance with the amended Va. Code Ann. § 53.1-202.3. In around March 2022, VDOC provided Mr. Prease written notification that he would be released between July 1, 2022 and September 1, 2022, as a result of the new law. Mr. Prease was given and completed the paperwork to establish his home plan, including a reentry planning book. As part of his re-entry preparations, Mr. Prease was advised that his recidivism risk upon release was considered “low.” Eventually, VDOC approved his home plan and assisted him in obtaining a state-issued identification card. Mr. Prease continued to believe that he would be released after his home plan was approved.

18. Expecting to be released, Mr. Prease arranged for a place to live, planned for employment, made arrangements with the U.S. Department of Veterans Affairs and looked forward to spending time with his family, especially his 16-year-old son. Mr. Prease lined up a job mowing his neighbor’s yard, and had his mother buy tools so that he could start his own business. Mr. Prease even had a friend plant a garden at his mother’s house in May, so that he could harvest the food when he was released.

19. However, in late May or early June, Mr. Prease was called in to his counselor's office at Dillwyn Correctional Center. The counselor told him that his name was no longer on the list to be released under the new earned sentence credit law. After finding out that he would not be going home, but had almost two more years to serve, Mr. Prease became depressed and has sought mental health treatment.

20. Mr. Prease has been incarcerated for over 10 years. In that time, he has taken numerous actions through which he has earned sentence credits. He has sought mental health treatment for his PTSD and has focused on maintaining his sobriety. He has taken advantage of educational opportunities: he is currently enrolled in a Basic Software Applications class, and has completed other classes in computer literacy, economics, and personal finance. He has maintained employment, working as a floor buffer and a trashman.

21. Mr. Prease has maintained close bonds with family and friends in the community. Mr. Prease was born and raised in Virginia. He is a military veteran: he served on active duty in the U.S. Army beginning in 1999, and subsequently served in the National Guard. He was deployed to Afghanistan for 18 months from 2004-2005 and was honorably discharged in 2009. He also served his community as a volunteer fire fighter for many years. As a result of his military service, Mr. Prease has suffered from post-traumatic stress disorder.

22. As a result of VDOC's erroneous interpretation of the earned sentence credit law, Mr. Prease will miss out on family milestones and precious time with relatives. Mr. Prease has a close relationship with his 16-year-old son. Because he has been incarcerated since 2012, he has missed most of his son's childhood. Mr. Prease was looking forward to spending quality time with his son during his formative teenage years, and had arranged to share custody of him with his son's grandmother. Expecting to be released this summer, Mr. Prease had planned a fishing and camping trip for him and his son. Now, Mr. Prease may not even be released in time to attend his son's high school graduation.

CLAIM I

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

23. 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), attempted 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. Prease is eligible to earn expanded sentence credits on those convictions.

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

25. “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).

26. The VDOC’s erroneous interpretation and application of Va. Code Ann. § 53.1-202.3 directly impacts the duration of Mr. Prease’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 Steven Prease 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,
STEVEN PATRICK PREASE
By Counsel:



Geri Greenspan, VSB #76786
Vishal Agraharkar, VSB #93265
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
701 E. Franklin St., Suite 1412
Richmond, VA 23219
Phone: (804) 491-8584
ggreenspan@acluva.org
vagraharkar@acluva.org

CITY/COUNTY OF Buckingham

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.

John Preece

Signature of Petitioner

Subscribed and sworn to before me this 13th day of October, 2022.

Cassandra Holman

Notary Public

My commission expires September 30, 2024

