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No. ~~82149-6~~

SUPREME COURT OF
THE STATE OF WASHINGTON

In re Personal Restraint of Teddy G. Talley

Petitioner's Reply Brief

Teddy G. Talley, #304090 D220-2
McNeil Island Corrections Center
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II. Issues Presented For Review

Issue I.

"Did The Department Of Corrections Inadvertently Miscalculate, And/Or Deny Mr. Talley's Good-Time Credits Earned During His Pre-Sentence Confinement In Skamania County By 58-Days In Violation Of His Equal Protection Rights Under The Fourteenth Amendment Of The United States Constitution?"

Issue II.

"Did The Department Of Corrections Inadvertently Miscalculate Mr. Talley's Actual Good-Time Served During His Presentence Confinement In Skamania County By 2-Days?"

III. Statement of Facts

Mr. Talley was sentenced to 123-months. [J & S, App. A]. Mr. Talley's date of arrest was October 28, 2005. After sentencing, Mr. Talley was transferred on March 29, 2007 to the Department of Corrections. The total length in Mr. Talley's actual confinement in the Skamania County Jail from October 28, 2005 on to March 29, 2007 is 518-days: Not 516-Days as the Skamania County Jail claims. [App. C, Ex. 1].

If Mr. Talley were to serve out his entire

sentence without earned release time, he would have served 3,743-days, his release date would be January 29, 2016. If Mr. Talley were credited the full benefit of earned release time, at 10%, he would serve 3,369-days, his release date would be January 17, 2015: Not March 12, 2015 as the Department Of Corrections Claims. [App. D].

IV. Argument

Issue I

"The Department Of Corrections Inadvertently Miscalculated, And/Or Denied Mr. Talley's Good-Time Credits Earned During His Pre-Sentence Confinement In Skamania County By 58-Days In Violation Of His Equal Protection Rights Under The Fourteenth Amendment Of The United States Constitution"

This is a case that involves equal protection concerns. While Mr. Talley was determined by county jail officials to have exhibited good behavior while he was detained in jail pending trial and sentencing. The manner in which credit for good behavior was applied by the DOC and Skamania County implicate the equal protection clause of the federal constitution because the

county and State had no legitimate reason, such as a lack of good conduct on the part of the petitioner, to award Mr. Talley less good-time credit than he would have been awarded had he served his entire sentence in the Department of Corrections. RCW 72.09.130(2) states in its relevant part that "[E]arned early release days shall be recommended by the department as a reward for accomplishment." The only time "an inmate is not eligible to receive earned early release days [is] during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under." (emphasis added). The states reliance on its exhibited Jail Time Certificate evidences Mr. Talley's good behavior, and that he never refused an available education or work program into which he had been place under. **States Response Ex. 4.**

The equal protection clause of the United States Constitution requires the government to treat persons who are similarly situated in a like manner. See U.S. Const. Amend. XIV, § I. The central issue in this case concerns the denial of a liberty interest based on wealth, a semisuspect

classification, the appropriate standard of review of the policies of the counties is intermediate scrutiny. The test under this level of scrutiny is whether the disparate treatment "may fairly be viewed as furthering a substantial interest of the State." Plyer v. Doe, 457 U.S. 202, 217-18, 102 S.Ct. 2382, 72 L.Ed. 2d 786, reh'g denied, 458 U.S. 1131 (1992) (footnote omitted).

The class of persons subjected to disparate treatment in this case is persons who are sentenced to state correctional facilities for noncapital felonies. While all members of this class who are not released from jail on their personal recognizance pending trial have the right to obtain their release by posting bail,¹ some members of that class have sufficient funds to post bail and others do not. The portion of the class that is unable to post bail is subject to the earned early release credit policies of the county, those members of the class that obtain release on bail, but who later convicted and

1. Washington Const. art. I, § 20; CrR 3.2. See also State v. Kelly, 60 Wn. App. 921, 926-27, 808 P.2d 1150 (1991)

sentenced to prison, are subject to the more generous policies of DOC regarding good behavior credit, and thus become eligible to accumulate more earned early release credit for good behavior. Ultimately, the latter groups of individuals serve less of their sentences than those who were not able to post bail. The result is that the less wealthy members of the class fare worse than their more well-heeled classmates.

The state errs when comparing Mr. Talley's situation with the Fogle case for its reason to dismiss, because in that case it discussed the Equal Protection Analysis to determine whether or not, the state's substantial interest in maintaining prisoner discipline justified disparate treatment of pre-sentence detainees. In re Fogle, 128 Wn. 2d 56, 62-63, 904 P.2d 722 (1995). In that case, the deciding factor went to the question of whether or not the defendants were eligible for bail. Unlike Mr. Talley, both of those defendants in that case were held on separate fugitive warrants, likely to render payment of bail on the primary charge futile. 128 Wn. 2d at 63.

The petitioners appealed to the Ninth Circuit of Appeals. That court held that the county policies violated equal protection. MacFarlane v. Walter, 179 F.3d 1131 (1999). But, the United States Supreme Court ordered the case as moot. Lehman v. MacFarlane, 529 U.S. 1106, 120 S.Ct. 1959, 146 L.Ed. 2d 790 (2000). Remanding the case back to the Ninth Circuit, that court ordered the case as moot. MacFarlane v. Walter, 216 F.3d 881 (2000). In this present case, unlike Fogle and MacFarlane, Mr. Talley was not a fugitive, and he was in fact, with bail.

The State fails to recognize in the Willims case, this court said that "significant equal protection concerns are raised by the differential treatment that may be accorded the indigent as a result of his inability to post bail before trial." In re Williams, 121 Wn. 2d 655, 665, 853 P.2d 444 (1993) (citing Mota, 114 Wn. 2d at 469-70). If Mr. Talley were to appeal to the Ninth Circuit Court of Appeals today, it is plain, that that court would hold that the policies violated Mr. Talley's equal protection. And, because this very court has already decided the issues before

us, this court should follow its own prior decisions.

This Court also "[h]eld that although the DOC is "entitled to give presumptive legal effect to the certification the county jail provides," the certificate had no "legal force if it is based upon an apparent or manifest error of law."" Williams, 121 Wn. 2d at 664 (footnote omitted).

A system which accords some persons unfavorable treatment simply because they are financially unable to post bail, is unconstitutional. It is therefore based on a manifest error of law. This being the case, DOC cannot assume the passive role of blindly accepting the certificate of earned early release time indicating the amount of good behavior credit that was calculated by the counties. In light of the above, that portion of the certificate essentially can have no legal force other than to inform DOC that Mr. Talley is eligible for the maximum credit for good behavior allowable under DOC policies for the period of time the Petitioner served awaiting trial and sentencing, otherwise the Fourteenth Amendment to the United States

Constitution is offended by a system that awards less of the good behavior component of earned early release credit to an offender who is held in jail pending trial and sentencing on a noncapital felony than it awards to a similarly situated offender who serves his entire sentence in a Department of Correction (DOC) facility. Consequently, the Department of Corrections errors in its calculations.

Issue II

"Did The Department Of Corrections Inadvertently Miscalculate Mr. Talley's Actual Good-Time Served During His Presentence Confinement In Skamania County Jail By 2-Days?

Mr. Talley's date of arrest was October 28, 2005. After sentencing, Mr. Talley was transferred on March 29, 2007 to the Department of Corrections. The total length in Mr. Talley's actual confinement in the Skamania County Jail from October 28, 2005 on through until March 29, 2007 is 518-days: Not 516-Days as the Skamania County Jail claims. [App. C, Ex. 1].

If the State's current figures were calculated, that is, Mr. Talley being committed on
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October 27, 2005 States Response p.1 ¶ 2, and showing Mr. Talley's final date of jail time, the error wouldn't be 2-days, it would be 3-days. The states response cannot possibly be reliable in lieu of the errors with the response itself. For example: The state shows that DOC received custody of Mr. Talley from the jail March 20, 2007 twice. State Response p.2, ¶ 2.

The state evidences obvious errors within its own response. It would appear, that the state relies on the Offender Management Network Information ("OMNI") for its information to do with good-time. The information submitted by the State can only support the Petitioner's claim. The burden of proof is shown by simple calculations which in this case, he has accomplished that.

Respectfully submitted on this 9th day of February, 2009.


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DECLARATION OF SERVICE

I, Teddy G. Talley, certify that I deposited today in the internal mail system of McNeil Island Corrections Center a properly stamped and addressed envelope directed to:

Washington Supreme Court
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Olympia, WA. 98504-0929

Attorney General of Washington
Robert M. McKenna, Attorney General
Attn: Ron D. Larsen WSBA #31833
Corrections Division
P.O. Box 40116
Olympia, WA. 98504-0116

Containing the following document(s):

- # COVER Letter
- # PETITIONERS Reply BRIEF

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Submitted this 8th day of FEBRUARY, 20 09, at McNeil Island

Corrections Center, Steilacoom, Washington.

By Teddy G. Talley
(Signature)

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February 04, 2009

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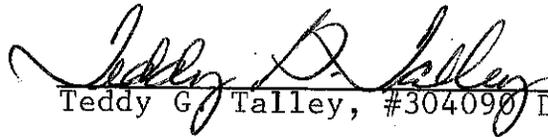
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("Reply Brief") *83284-6*

To whom this concerns:

This is my "Reply Brief" under the above cause number. I believe the the brief to be in proper order and should be allowed for processing. Thank you for your time in this matter.

Sincerely yours,


Teddy G. Talley, #304090 D220-2