

NO. 83284-6

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of

TEDDY GLEN TALLEY,

Petitioner,

**SUPPLEMENTAL BRIEF OF RESPONDENT
DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

In his personal restraint petition, Talley challenges the Skamania County Jail's policies regarding the award of earned early release time ("jail good time") for pre-sentence detainees. The Department of Corrections (DOC) does not control the county jail's policies, and by statute and case law is required to credit an inmate's sentence with the amount that a county jail certifies unless the certification contains apparent or manifest errors of law. This Court has held that the DOC is not required to review and approve the individual good-time policies adopted by the county jails.

In this case, the certification did not contain apparent or manifest errors of law and the DOC acted properly in crediting Talley the amount of good time certified. Counsel for the DOC does not represent the jail, and therefore takes no position on the jail's policy.

II. STATEMENT OF THE CASE

A. Factual Background

Talley pleaded guilty to second degree murder. Appendix 2, Judgment and Sentence.¹ The trial court sentenced him to 123 months of confinement. *Id.* at 6. The Skamania County Jail, where Talley had been confined prior to sentencing, issued a certification to the DOC showing

¹ All references to appendices are references to the appendices attached to the DOC's Response to Talley's Motion for Discretionary Review.

516 days of jail time served and zero days of jail good time. Appendix 5, Jail Certification. Pursuant to former RCW 9.94A.728(1) (2005),² the DOC followed the jail's certification and applied zero days of jail good time to Talley's sentence. Appendix 4, Sentence Information Screen (showing zero "Cause ERT Credit"). See former RCW 9.94A.728(1) ("If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time").

In March 2008, Talley wrote to DOC alleging that the DOC's sentence calculation was off by 55 days because he should have earned good time credits while at the jail at a rate of 10 percent. Appendix 6, Letter from Talley to DOC dated March 11, 2008. In another letter, he claimed that he was denied early release time based on the unavailability of programs. Appendix 7, Letter from DOC to Talley dated April 28, 2008. The DOC responded that he needed to contact the jail to take issue with jail good time. Appendix 8, Inmate Kite.

B. Procedural History

Talley filed a personal restraint petition in the Court of Appeals, alleging that DOC miscalculated his prison early release credits by 55

² Currently codified as RCW 9.94A.729(1)(b).

days, that the DOC miscalculated presentence time served (“jail time served”) by two days, that the DOC miscalculated jail good time by 58 days, and that the DOC’s miscalculation of jail good time violated Talley’s equal protection rights. Personal Restraint Petition of Talley, at 3-4. The DOC responded that Talley’s math was wrong regarding the 55 days of DOC good time and the 2 days of jail time, and that Talley’s equal protection claim regarding jail good time was without merit. Response of the Department of Corrections, at 1.

The Washington Court of Appeals granted the petition with regard to the two days of jail time and denied the petition with regard to the other claims. Order Granting Petition in Part and Denying Petition in Part, *In re PRP of Talley*, No. 39080-9-II (June 17, 2009). Talley then moved for discretionary review. This Court ordered the DOC to respond, citing RCW 9.92.151(1). *See* Ruling dated October 28, 2009.

In the DOC’s response, it addressed the merits of Talley’s claim but it also stated that the Court should instead substitute the county prosecutor as the proper respondent because counsel for the DOC does not represent the jail and therefore can defend the DOC but not the jail’s policies. Response of the DOC to Motion for Discretionary Review, at 1. The Court did not substitute the prosecutor but instead added the

prosecutor as co-respondent, leaving the DOC in the case. *See* Ruling dated February 11, 2010.

III. ARGUMENT

A. The DOC Properly Relied On The Jail Certification In Crediting Jail Good Time

The Skamania County Jail's policy of not allowing presentence detainees to participate in work programs does not implicate the DOC. The DOC is not required to review and approve the individual good-time policies adopted by the county jails. *In re Williams*, 121 Wn.2d 655, 664, 853 P.2d 444 (1993).

The DOC received a jail certification from the Skamania County Jail that included no days of good conduct time. The jail certification on its face does not show any apparent or manifest errors of law. By statute and case law, the DOC was entitled to rely on the jail's certification.

Statute requires that when an offender is transferred from jail to the DOC, the jail must certify to the DOC the amount of time spent in custody at the jail and the amount of early release time earned there. Former RCW 9.94A.728(1). The Department is entitled to give presumptive legal effect to this certification. *In re Williams*, 121 Wn.2d at 664. The statute prohibits the Department from accepting a jail certification only if the certification is based on apparent or manifest errors of law. *Id.* Under this

“apparent or manifest error of law” standard, the DOC is not required to review the accuracy of the jail certifications. *Id.* It also is not required to review and approve the individual good-time policies adopted by the county jails. *Id.*

In *Williams*, the petitioner alleged that DOC failed to adequately award jail good time. *Williams*, 121 Wn.2d at 658. In that case, the jail certification had stated that Williams was incarcerated for 232 days and earned 77 days of good time. *Id.*, 121 Wn.2d at 658. The Court of Appeals dismissed his petition, mistakenly concluding that the 77 days of jail good time was all he was entitled to under the statute. *Id.* This Court determined that Williams had not received the statutory maximum good time credit, and because the record did not indicate why the county jail credited Williams with less than the statutory maximum, it remanded for clarification. *Id.*, 121 Wn.2d at 658-59.

In its analysis, the Court clarified the legal effect of a jail certification. *Id.*, 121 Wn.2d at 664. The Court recognized that a county jail retains complete control over good time awards to offenders within its jurisdiction, but the Court rejected the idea that DOC has a purely passive role in accepting the certifications from the jails. *Id.*, 121 Wn.2d at 664-65. The Court construed the statute to prohibit DOC from “accepting certifications that are based on apparent or manifest errors of law.” *Id.*

The Court in *Williams* did not further elaborate, however, except to state that under this standard, the DOC is not obligated to review the accuracy of certifications from county jails if the certifications contain no apparent or manifest errors of law. *Williams*, 121 Wn.2d at 666.

The *Williams* court emphasized that former RCW 9.94A.150 (later codified as former RCW 9.94A.728(1)) “divides authority over the award of good-time between the county jail and the Department.” *Williams*, 121 Wn.2d at 661. The Court found that nothing in the statute’s structure or language indicates that the DOC should ignore the certification from the county jail and recalculate the award of good-time. *Id.* “Indeed, the statute appears to give the various correctional authorities, both county jails and the state correctional system, plenary authority over good-time awards for offenders under their jurisdiction.” *Id.*

The Court also reasoned that the “purpose of the award or denial of good-time also belies” an interpretation that would require the DOC to ignore a county’s good time calculation. *Id.* The Court noted that good time serves important disciplinary goals and the structure of the statute (i.e., former RCW 9.94A.728(1)) reflects this. *Id.* It is important that a jail actually have control over the award of good time for offenders under its jurisdiction. *Williams*, 121 Wn.2d at 662. “Good-time would be useless in controlling prison discipline in county jails if offenders knew

they would be automatically credited with full good-time upon their transfer to the Department.” Hence, the statute gives control over the award or denial of good time to the institution in which the offender is actually incarcerated. *Id.*

In this case, the DOC followed former RCW 9.94A.728(1) and applied the credits listed in the jail certification because there were no apparent or manifest errors of law on it. The mere absence of good time on the certification is not an apparent or manifest error because the absence of good time could just as easily have been due to the jail not having any good time policy for its inmates, or to Talley having failed to earn the good time for which he may have been eligible while in the jail.³

B. The DOC Has No Jurisdiction Over The Jail’s Good Time Procedures

Talley argues that RCW 9.92.151⁴ requires the jail to award him good time for presentence incarceration. Former RCW 9.94A.728

³ When the DOC believes that an error in jail time served or jail good time may exist, records staff will investigate, usually by communicating with the jail. *See, e.g., In re Erickson*, 146 Wn. App. 576, 191 P.3d 917 (2008) (DOC investigated jail good time where sentencing court had ordered much more credit for time served than jail records indicated defendant had served, and where amount of good time is dependent on amount of time served).

⁴ RCW 9.92.151 states in part:

[T]he sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. . . . Any program established pursuant to this section shall

provides that early release credits for offenders sentenced to the custody of the DOC are to be based on the policies of the agency that has jurisdiction over the facility where the offender is confined. RCW 9.94A.728(1) (“The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined”); *Williams*, 121 Wn.2d at 664, 666; *In re Erickson*, 146 Wn. App. 576, 585, 191 P.3d 917 (2008). The DOC does not have jurisdiction over offenders when they are in the county jail. RCW 9.92.151 does not apply to the DOC. It applies to the jail.

The county jail has jurisdiction over the determination of Talley’s jail good time. Hence, the DOC is not the proper entity to respond to Talley’s equal protection claim involving the jail’s early release time.

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allow an offender to earn early release credits for presentence incarceration.

IV. CONCLUSION

The DOC respectfully requests that the Court find that DOC has correctly followed applicable law in relying on the jail's certification of time served and good time.

RESPECTFULLY SUBMITTED this 15th day of April, 2011.

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I certify that on the date below I served a copy of the
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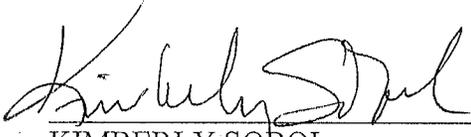
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I certify under penalty of perjury that the foregoing is true and
correct.

EXECUTED this 15th day of April, 2011 at Olympia,
Washington.



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