

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT No. 83284-6

PERSONAL RESTRAINT PETITION OF TEDDY GLENN TEDDY

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FINAL BRIEF AND MOTION FOR SANCTIONS

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PROFESSOR  
SUPREME COURT  
STATE OF WASH  
2010 MAY 11 AM 8:11  
CLERK  
CAB

May 9, 2010

Teddy Glenn Talley  
Petitioner pro se  
304090 D 220-2  
McNeil Island Correction Center  
P. O. Box 881000  
Steilacoom, WA 98388

In so far as the respondents have not responded, even after the court granted them an extension of time, the petitioner offers the following to aid the court in its determination in this case.

Further, the petitioner asks the court to consider sanctions against the respondents for their failure to respond and for the resulting delay in this case.

**1. WHAT IS THE CONTROLLING LAW REGARDING JAIL GOOD/EARNED TIME CREDITS?**

It would appear that the controlling statute is RCW 9.92.151 (2004) where this statute states that "a felony ... conviction may [emphasis added] be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the corrections agency having jurisdiction." In the instance the Skamania County jail acknowledges that it has both jurisdiction and policies in place for granting earned release credits, but denies the application of these credits to this petitioner and those similarly situated, not by fault of the petitioner, but for merely being accused of a crime and unable to obtain bail.

The petitioner was a pretrial detainee where the presumption is that he be treated as innocent until proven guilty and imprisoned only for the failure to make bail implicated both equal protection and due process under clearly established law. See Rhem v. Malcolm, 507 F.2d 333, 336 (2nd Cir 1974); Bell v Wolfish, 441 U.S. 520, 60 L.Ed.2d 447, 461, 99 S.Ct. 1861 (1979).

Thus Skamania County jail appears to argue that the petitioner may be striped of eligibility for earned release credits soley (there is no other basis involved here as the petitioner has not incurred and infractions) on the basis of being accused of committing a serious crime, certainly nothing else.

In light of Bell, depriving the petitioner of earned time credits clearly increases the amount of incarceration actually served and consequently increases the punishment metted out to him without any kind of process where he could be heard before punishment is implemented as if the constitution did not exist. This clearly violated the due process clause of both the Fifth and Fourteenth Amendments of the United States Constitution and the similar provisions of the

Washington State constitution.

Further, RCW 9.92.151 goes on to state "The earned early release time **shall** [emphasis added] be for good behavior and good performance as determined by the correctional agency having jurisdiction." It is important to recall that no allegation of misconduct or misbehavior has been made, merely that jail policy punished those who cannot make bail and are accused of a serious crime. The petitioner did engage in good behavior which can also be construed as good performance under the circumstances.

The Statute goes on to state that "Any program established pursuant to this section **Shall** [emphasis added] allow an offender to earn early release credits for presentence incarceration." It is here that the full intent of the legislature becomes evident (This also explains why the respondents remained silent). The Jail was mandated to allow the opportunity for all jail inmates to earn early release credits for presentence incarceration. Thus once it is established that the jail created a policy that allows anyone in its custody to earn early release credits; they must be applied to all.

As a fundamental principle of the jurisprudence of criminal law is the rule that a pretrial detainee retains all of the rights afforded unincarcerated individuals. Therefore, pretrial detainees may be subjected to only those "restrictions and principles" which "inhere in their confinement itself which are justified by compelling necessities of jail administration." Wolfish v. Levi, 573 F.2d 118, 124 (2nd Cir. 1978).

The standard of compelling necessity clearly does not apply here where the jail has no penological interest in denying earned release credits to a pretrial detainee. Especially absent any misbehavior on his part and using as its authority its own policy which is on its face in violation of RCW 9.92.151.

In conclusion: Both the constitution, in its demand for due process and the relevant RCW require the opportunity by pretrial detainees to earn early release credits and any other conclusion supports the arbitrary and capricious punishment of otherwise deserving pretrial detainees. Therefore at minimum the petitioner should receive the same credits that DOC is required to credit him; if not then the twenty

percent (20%) that all other jail inmates earned. Fairness dictates that the proper award is what Skamania County routinely awards others situated as was this petitioner which is a credit of 20% for the time spent as a pretrial detainee.

Respectfully submitted,

Dated this 9th day of May, 2010.



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PERSONAL RESTRAINT OF  
TEDDY GLENN TALLEY

) No. 83284-6  
)  
) SERVICE BY MAIL  
)

I, Teddy Glenn Talley, did mail via legal mail a copy of my  
final brief and motion for sanctions to

Ronald Carpenter  
Clerk  
Supreme Court  
P. O. Box 40929  
Olympia, WA 98504

Daniel McGill  
Deputy Prosecutor  
Skamania County Prosecutor  
P. O. Box 790  
Stevenson, WA 98648

Ronda Denise Larson  
Attorney General's Office  
Corrections Division  
P. O. Box 40116  
Olympia, WA 98504

A copy of this service by mail was also sent.

The foregoing is true and correct and made under penalty of  
perjury pursuant to the laws of the state of Washington.

Dated this 9th day of May, 2010.



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