

NO. 83284-6

SUPREME COURT OF WASHINGTON

In re the Personal Restraint of
TEDDY GLENN TALLEY,
Petitioner

Reply of the Petitioner to the
Response of the Department of Corrections

Teddy Glenn Talley
304090 : D-Unit
PO Box 881000
Steilacoom WA 98388-1000

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FILE

ISSUES PRESENTED

DOES THE POLICY OF SCJ TO DENY EARNED EARLY
RELEASE CREDITS TO PRESENTENCE OFFENDERS
VIOLATE RCW 9.92.151, AND THE EQUAL
PROTECTION CLAUSE OF OUR STATE AND FEDERAL
CONSTITUTIONS?

I - IDENTITY OF PARTY

Teddy Glenn Talley, Petitioner, pro se, does hereby reply to the Response of the Department of Corrections Response to Motion for Discretionary Review.

II - FACTS RELEVANT TO REVIEW

Petitioner accepts as accurate the facts as set forth in the Department's Response to Motion for Discretionary Review.

III - STATEMENT OF THE CASE

- 3.1 Talley spent 518 days in the Skamania County Jail (SCJ) prior to being sentenced to 123-months confinement on second degree murder.
- 3.2 SCJ certified 516 days time actually served, and zero (0) days "earned early release" time (good-time) because Talley was held the entire time in presentence detention.
- 3.3 SCJ has a blanket policy of not certifying earned early release credits for presentence incarceration periods, because those offenders are unable to participate in work programs due to their status as pre-trial inmates.

IV - COURT OF APPEALS DECISION

- 4.1 Division II stated that "Washington Courts have upheld the authority of county jails to grant earned early release credits to pre-sentence inmates at rates lower than the rates applicable to inmates in the custody of the Department." [Citing In re Personal Restraint of Fogle, 128 Wn 2d 56, 63, 904 P2d 722 (1995); In re Personal Restraint of Cromeenes, 72 Wn App 353, 358, 864 P2d 423 (1993)] slip-op at p. 2.

- 4.2 Utilizing this reasoning, Division II granted the petition in regard to the two days of actual incarceration time served, but denied the petition with respect to the good-time claims and equal protection. [See Slip-op at p. 2; Appendix I, Response of Department].
- 4.3 The decision of Division II failed to address that part of RCW 9.92.151 which requires that "[a]ny program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration...."
- 4.4 SCJ's policy violates both the statutory mandate, and the constitutional prohibition against disparate treatment.

V - ISSUE

Argument

RCW 9.92.151, provides in relevant part:

"... the 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 allow an offender to earn early release credits for presentence incarceration...." (My emphasis)

- 5.1 All parties agree that the foregoing is the correct governing statute. However, the parties (and Division II) differ as to its interpretation and application in the present matter. The Court of Appeals sided with the Department, and reasoned that because the statute provides that the sentence "may be reduced by early release credits,..." no liberty interest attached in the earning of any specific

amount of credits - or the accrual of any at all, and cited Fogle and Cromeenes (supra) as supporting this proposition. However, those matters are easily distinguishable from the present case.

5.2 The issues presented in Fogle was whether the County Jails could authorize "good-time" credits at rates other than those authorized by the department. There, as now, the governing statutes authorize the correctional agency having jurisdiction to develop the procedures by which inmates can earn the privileged credits. The procedures in place were found to be constitutionally adequate because they applied equally to all inmates, and provided for credit for presentence incarceration at a rate of 15% and 30% [depending on whether the inmates earned trustee status]. Fogle, 128 Wn 2d at 63.

5.2 Petitioner does not dispute that SCJ has the right to grant earned release credits at rates other than provided by the Department. This includes the right not to provide earned time credits at all. However, pursuant to the provisions of RCW 9.92.151, "[a]ny program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration."

5.3 It is undisputed by respondents that SCJ provides earned early release credits to all other offenders, and only denies the credits for presentence incarceration periods.

5.4 DOES RCW 9.92.151 AUTHORIZE SCJ TO DENY ANY INMATE EARNED EARLY RELEASE CREDITS FOR PRESENTENCE PERIODS OF INCARCERATION?

- 5.5 Statutory construction begins by reading the text of the statute or statutes involved; if the language is unambiguous, a court is to rely solely on the statutory language when construing the statute. State v. Roggenkamp, 153 Wn 2d 614, 106 P3d 196 (2005).
- 5.6 The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose, which is done by considering the statute as a whole, giving effect to all that the legislature has said, and by using related statutes to help identify the legislative intent embodied in the provision in question. Department of Labor and Industries v. Gongyin, 154 Wn 2d 38 (2005). Statutes should be construed so that no part of the statutory scheme is rendered superfluous or meaningless. State ex rel Evergreen Freedom Foundation v. Washington Educ. Ass'n, 140 Wn 2d 615, 999 P2d 602 (2000).
- 5.7 The plain and unambiguous language of RCW 9.92.151 requires that "Any program established pursuant to this section shall allow an offender to earn release credits for presentence incarceration."
- 5.8 Respondent is correct that the statute grants the county jails the authority to determine whether, and at what rate, earned early release credits are to be provided to offenders. However, ANY program that is established MUST/SHALL provide earned release credits for presentence detention.
- 5.9 It is undisputed that SCJ has an earned early release program. However, that program discriminates against presentence

offenders, by denying them earned release credits for time spent in presentence detention.

- 5.10 PETITIONER WAS DENIED EQUAL PROTECTION OF THE LAWS BY THE BLANKET DENIAL OF EARNED RELEASE CREDITS FOR PRESENTENCE INCARCERATION TIME
- 5.11 Equal protection requires that persons similarly situated receive like treatment." Fogle, 128 Wn 2d at 62, citing In re Mota, 114 Wn 2d 465, 473, 788 P2d 538 (1990). Intermediate scrutiny is the standard that this court has held is applicable to a challenge regarding the denial of earned release credits to presentence detainees. *Id.*
- 5.12 The Mota court went on to provide that the state there had failed to establish a substantial interest in denying presentence detainees any earned release credit. Fogle, *supra*, citing Mota, 114 Wn 2d at 473. The facts surrounding Mota are not distinguishable from the facts of the present case. There is no justifiable basis for denying presentence offenders earned early release credits to their sentence. The Department's assertions to the contrary notwithstanding.

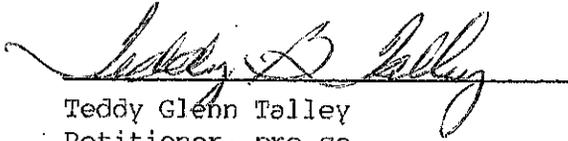
VI - CONCLUSIONS

- 6.1 RCW 9.92.151 requires that if a county jail implements an earned early release time program at its facility, then that program "shall allow an offender to earn early release credits for presentence incarceration."
- 6.2 The use of the word shall is mandatory, and SCJ has no discretion in its implementation. See In re Cahaw, 128

wn 2d 138, 866 P2d 8 (1994).

- 6.3 SCJ has a blanket policy of denying presentence offenders earned early release credits, while providing post-sentencing credits to other offenders.
- 6.4 This blanket policy violates both the statutory mandate of RCW 9.92.151, as well as the constitutional proscription against disparate treatment. Mota, supra; Fogle, supra.
- 6.5 Based upon the foregoing facts and argument, this court should accept review of this matter to distinguish the facts of this case from those presented in Fogle.

Respectfully submitted on this 15th day of December, 2009.


Teddy Glenn Talley
Petitioner, pro se

I, Teddy Talley, certify that I mailed a true and correct copy of the foregoing to all parties or their counsel on this 16 day of December, 2009.

