

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**RICHARD R. COOCH**  
RESIDENT JUDGE

**DANIEL L. HERRMANN COURT HOUSE  
WILMINGTON, DELAWARE 19801**

Larry J. Richmond  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, Delaware 19977

Ophelia M. Waters, Esq.  
Deputy Attorney General  
Department of Justice  
Carvel State Office Building  
820 N. French Street  
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**Re: *Larry J. Richmond v. Robert Snyder, Rebecca McBride, and the  
Delaware Department of Corrections*  
C.A. No. 01M-09-075 RRC**

Submitted: December 11, 2001  
Decided: January 22, 2002

On State Respondents' Motion to Dismiss Petition for Writ of Mandamus: **GRANTED.**

Dear Mr. Richmond and Ms. Waters:

This is the Court's decision on the petition of Larry J. Richmond ("Petitioner") essentially requesting the Court to issue a writ of mandamus compelling Robert Snyder, formerly Warden of Delaware Correction Center, Rebecca McBride, the Head of Records at Delaware Correction Center, and the Department of Corrections (collectively the "Respondents") to void the January 28, 1997 action of the Board of Parole (the "Board") resulting in Petitioner's parole revocation and reinstatement of earlier sentence from which Petitioner was paroled. Petitioner ultimately seeks recalculation and reinstatement of his previously earned good-time credits. The Court however finds that Petitioner has

established neither a clear legal right nor the absence of any other adequate remedy that would warrant the issuance of a writ of mandamus, and accordingly **GRANTS** the Respondents' motion.

### ***FACTUAL AND PROCEDURAL HISTORY***

Petitioner has a long and convoluted history of criminal convictions in Delaware, both before and after adoption of the Truth in Sentencing Act of 1989, 11 Del. C. Ch. 42 ("TIS"). In May 1977, Petitioner was convicted of two counts of Robbery First Degree and two counts of Possession of a Deadly Weapon During the Commission of a Felony, and was sentenced to a total of 16 years at Level V. In December 1977, Petitioner was convicted for the charge of Escape After Conviction, and was sentenced for two years at Level V, to be served at the beginning of the expiration of the May 1977 sentencing. This escape after conviction sentence was modified by this Court in January 1978 so that Petitioner was to serve one year for the Escape After Conviction conviction at Level V and one year on probation.

In October 1978, Petitioner was convicted of Escape, Robbery First Degree, and Felony and Misdemeanor Theft charges, and was sentenced to 15 years at Level V, consecutive to any sentence Petitioner was then serving.

In May 1979, a modification of sentence was entered as to the May 1977 convictions. The two counts of Possession of a Deadly Weapon During the Commission of a Felony were stricken, and the sentence for each count of Robbery First Degree was increased to eight years; Petitioner was thereafter to serve 16 years at Level V for those offenses.

In June 1980, while incarcerated, Petitioner was caught with approximately 12 feet of nylon rope in his possession. In December 1980, Petitioner was convicted of two

counts of Possession of Prison Contraband (the nylon rope), and was sentenced to a 180 day term, to be served consecutive to the Petitioner's October 1978 convictions.

In July 1981, a Correction of Sentence Order was entered by this Court with respect to the May 1977 convictions, as modified in May 1979. As a result, the sentence for one of the Robbery First Degree counts was modified to three years at Level V, while sentencing for the other Robbery First Degree count remained the same at eight years.

In February 1993, the Board certified Petitioner as eligible for parole, and he was subsequently paroled in September 1994. In October 1996, Petitioner violated his parole by failing to report to his supervising office, and by leaving Delaware without proper authorization. Thereafter, the Board issued a warrant for Petitioner's arrest, pursuant to which Petitioner was eventually recaptured. In January 1997, after conducting a hearing, the Board found Petitioner guilty of violating the conditions of his parole. Petitioner was then notified in writing that: 1) his parole was revoked; 2) he would serve the balance of the sentence from which he was paroled; and 3) he would lose his previously earned good-time.

In October 1997, Petitioner was convicted of one count of Arson Second Degree and one count of Burglary Third Degree, to which Petitioner was sentenced to five years at Level V for the arson charge (pursuant to the Habitual Offender provision found at 11 Del. C. § 4214(a)), and three years at Level V with a flow-down to Level II for the burglary charge. This sentencing interrupted the violation of parole sentence imposed in January 1997 ("If the Defendant is presently serving another sentence, that sentence shall be suspended until completion of this sentence.")<sup>1</sup>; that violation of parole sentence is now scheduled to begin in August 2002.

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<sup>1</sup> State v. Richmond, Del. Super., Cr. A. No. IN97-01-0825, Cooch, J. (August 22, 1997) (ORDER).

In August 2001, Petitioner filed a *pro se* petition seeking a writ of mandamus in this Court directed towards the Respondents. Petitioner seeks a writ “directing respondents [sic] to credit Petitioner with calculated good time on 5 year sentence (SYNTAC) [sic], and credit Petitioner with time lost due to unadjusted eligibility date”, as well as “directing respondents [sic] to eliminate the 5 year Violation of Probation sentence it, itself imposed” and “directing respondents [sic] to reinstate all previously earned good time on DE. 11 4352, 000A M.” Petitioner does not “attack[ ] the sentences imposed, nor the judgements [sic] of the Court,” but rather, “the actions of an agency, Dept. of Corrections, in applying those sentences....”

### ***CONTENTIONS OF THE PARTIES***

Petitioner argues that “[f]or the Department of Corrections to assess petitioner with a violation of probation sentence, not imposed by any Court, was clearly a violation of petitioner’s Constitutional right to due process” and that “[p]ursuant to 11 Del. C. § 4334(c), only the Court has authority to revoke, violate, or suspend a probationary sentence.” Petitioner believes that “[i]n this case the Court had in fact dismissed the violation of probation charge against the petitioner.” Furthermore, Petitioner argues that “pursuant to the Delaware Supreme Court’s holding in Nardini v. Willin<sup>2</sup>[ ],the Department of Corrections may not take a person’s previously earned good time when the person is returned to prison on the same charge, *i.e.*, violation.”

In response, Respondents<sup>3</sup> assert that Petitioner’s claims are “wholly without

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<sup>2</sup> 245 A.2d 164 (Del. 1968).

<sup>3</sup> The Court notes that Respondents’ motion states that at the time of its filing, Robert Snyder yet to be served with the petition, and counsel had therefore not entered an appearance on Mr. Snyder’s behalf. Furthermore, Respondents represent that as of October 1, 2001, Mr. Snyder retired as warden of the Delaware Correctional Center, and would therefore no longer have any authority to act pursuant to the writ Petitioner seeks to have issued.

merit”. Respondents point out that the August 1997 sentencing for Petitioner’s conviction of Arson 2nd Degree was imposed pursuant to TIS, and that “[t]his new TIS sentence interrupted Petitioner’s earlier reinstated balance of the non-TIS sentence.” Respondents argue that “in accordance with statutory mandate, the Delaware Board has the authority to revoke good time credits and to re-incarcerate a person who commits a violation while under its supervision, without regard to whether that person was sentenced pursuant to TIS or pursuant to the previous sentencing statutes.” Respondents submit that the petition should be dismissed because “Petitioner has failed to show a clear right to have good-time credits which were taken away by the Parole Board restored, or to any other requested relief.”

### ***STANDARD OF REVIEW***

A writ of mandamus is a command that may be issued by the Superior Court to an inferior court, public official, or agency to compel the performance of a duty to which the petitioner has established a clear legal right.<sup>4</sup> A writ of mandamus will not issue unless the petitioner can establish that there is no other adequate remedy available.<sup>5</sup>

There is no statutory jurisdiction for Superior Court to review decisions of the Board.<sup>6</sup> In the absence of evidence of flagrant, unwarranted, or unauthorized action by the Parole Board, it is not for the Court to review such proceedings.<sup>7</sup>

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<sup>4</sup> Milford 2nd St. Players v. Delaware Alcoholic Beverage Control Comm’n, 552 A.2d 855 (Del. Super. 1988).

<sup>5</sup> In re Hyson, 649 A.2d 807 (Del. 1994).

<sup>6</sup> Moore v. State, 171 A.2d 215 (Del. 1961); Norris v. Casson, 460 A.2d 547 (Del. Super. 1982).

<sup>7</sup> Garvey v. Casson, 423 F.Supp. 68 (D.Del. 1976) (utilizing “substantial evidence” standard of review in determining whether petitioner’s claim that he was wrongly denied parole had merit).

## *DISCUSSION*

11 Del. C. § 4352 governs the actions the Board may take when a released prisoner violates parole. It provides that the Board (or any board member) may issue a warrant for the violator's arrest, as well as the procedure that follows the arrest of a parole violator. The statute also provides for revocation of parole:

- (c) Upon such arrest and detention, the Department [of Corrections] shall immediately notify the Board and shall submit a report showing in what manner the person had violated the conditions of the release. The Board shall cause the person to be brought promptly before it for a hearing on the violation charge, under such rules and regulations as the board may adopt.
- (d) If the violation is established by the hearing, the Board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.
- ....
- (f) If it shall appear that the person has violated the provisions of the person's release, the Board shall determine whether the time from the issuing of the warrant to the date of the person's arrest, or any part of it, shall be counted as time under the sentence.
- (g) Any person who commits a crime while at large on parole or conditional release and is convicted and sentenced therefore shall serve the unexpired portion of the term under which the person was released consecutively after any new sentence for the new offense.

Furthermore, 11 Del. C. § 4382 provides for forfeiture by the Department of Corrections of good time:

- (a) Any person subject to the custody of the Department [of Corrections] at Level IV or V shall, upon the conviction of any crime during the term of the sentence, forfeit all good time accumulated to the date of the criminal act; this forfeiture is not subject to suspension.
- (b) Any person subject to the custody of the Department of Corrections at Level IV or V who is determined to have violated the rules of the Department of Corrections shall under the rules and procedures of the Department forfeit all or part of the good time accrued to the date of such offense. Forfeiture under this subsection may be suspended by the Department for the purposes of encouraging rehabilitation or compliance with discipline.
- ....
- (d) When good time is actually ordered forfeit, it may not be recovered by the incarcerated person.

Here, the record shows that in October 1996, Petitioner violated the conditions of his parole and accordingly, the Board issued a warrant for his arrest. The Board had such authority pursuant to 11 Del. C. § 4352. The record further shows that a statutorily

mandated parole violation hearing was held, as evidenced by the notice provided to Petitioner on January 29, 1997.

In the notice Petitioner received, the Board expressly stated that Petitioner's parole was revoked, that Petitioner would serve the balance of the sentence from which he was paroled, and that Petitioner's previously earned good-time was lost. The Board properly exercised its authority to revoke Petitioner's parole and reinstate the sentence from which Petitioner was paroled pursuant to 11 Del. C. § 4352(d); additionally, 11 Del. C. § 4382 provides for revocation of good-time when a person in Level IV or V custody of the Department of Corrections violates the rules of the Department of Corrections, as happened here when Petitioner violated the terms of his parole. The Board therefore acted within its authority.

Petitioner argues that 11 Del. C. § 4334(c) mandates that only the Court has authority to "revoke, violate, or suspend a probationary sentence." That section of Title 11, which pertains to sentencing a probationer for violating probation, provides in pertinent part:

If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might have been imposed.

The section also provides that insofar as a violation of probation is "technical and minor", the Department of Corrections itself may sanction a probationer.

Petitioner's argument that a correctional authority has exceeded its command is without merit—Petitioner is subject to parole, not probation, and therefore 11 Del. C. § 4334(c) does not apply. Even if § 4334(c) were to apply, Petitioner is incorrect in his argument that no entity besides the Court has authority to sanction a probationer.

Petitioner's reliance on Nardini v. Willin is misplaced. While that case generally concerns revocation of good-time credits, its holding was limited to a prohibition of the Department of Correction's then-standing practice of computing good-time credit following good-time credit forfeiture as though the prisoner were just being sentenced. The prisoner in Nardini had been imprisoned for a long enough time that he was earning 10 days per month of good-time credit; following forfeiture of that credit due to violation of parole, the prisoner was relegated to the initial five days per month basis of good-time credit computation. The Court determined that the Department of Corrections had therefore exceeded its authority. Those are not the facts presently before this Court, and the Court therefore finds Nardini inapposite.

Lastly, Petitioner erroneously states that this Court dismissed the reinstated sentence the Board imposed in January 1997. The Sentence Order from Petitioner's October 1997 conviction shows that the sentence imposed pursuant to the TIS guidelines for Arson Second Degree and Burglary Third Degree merely interrupt Petitioner's earlier reinstated sentence. Petitioner is therefore not entitled to a reduction of any sentence he is currently serving, and Respondents' motion should be granted.

### ***CONCLUSION***

Having found no right to a reduction of sentence or other duty to which Petitioner is entitled performance, the Court declines to issue a writ of mandamus as requested by the Petitioner. Petitioner cannot show that the Board exceeded its authority or that any other violation has been committed. Petitioner's arguments are without merit, and



Petitioner has therefore failed to demonstrate a clear legal right. Accordingly, the Court  
**GRANTS** Respondents' motion to dismiss.

**IT IS SO ORDERED.**

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cc: Prothonotary  
Investigative Services Office