SUPREME COURT OF FLORIDA

DANIEL KEVIN SCHMIDT,	:	CASE NO.: SC00-2512
	:	Lower Tribunal No.: 1D00-4166
Petitioner,	:	Circuit Court No.: 00-1971
	:	
vs.	:	
	:	
STATE OF FLORIDA et al.,	:	
	:	
Respondents.	:	
	:	

AMENDED PETITION FOR WRIT OF MANDAMUS

Pursuant to this Court's Order Setting Oral Argument entered on July 3, 2001 and Rule 9.100 of the Florida Rules of Appellate Procedure, Petitioner Kevin Schmidt submits his Amended Petition for Writ of Mandamus. Mr. Schmidt asks this Court to direct the Respondents, State of Florida, John E. Crusoe, as Presiding Judge in Leon County Circuit Court, and Jon S. Wheeler, as Clerk of the First District Court of Appeal (collectively, the "Respondents"), to process his writ of mandamus in the courts below without requiring him to pay any filing fees based on section 57.085(10), Florida Statutes. In support of his Amended Petition for Writ of Mandamus, Mr. Schmidt states:

I.

INTRODUCTION

The issue before this Court is whether a writ of mandamus seeking the restoration of gain time is a collateral criminal proceeding under section 57.085(10), Florida Statutes. If such a writ petition is a collateral criminal proceeding, them Mr. Schmidt is not required to pay fees to file the petition in the appellate court. Mr. Schmidt asserts that such a writ petition is a collateral criminal proceeding for three reasons. First, a challenge to gain-time calculation directly attacks the sentence by challenging the amount of time a prisoner is incarcerated. Second, a gain-time challenge asserts that a prisoner is being unlawfully detained and is therefore similar to a statutory habeas proceeding, which is considered collateral. Third, the failure to treat a gain-time challenge as a collateral criminal matter will impede access to the courts by persons asserting the violation of fundamental liberty interests, a result not contemplated by the Florida Legislature. Accordingly, this Court should find that Mr. Schmidt's challenge to the Department of Corrections gain-time calculation is a collateral criminal proceeding and can be pursued without payment of filing

fees pursuant to section 57.085(10), Florida Statutes.

II.

JURISDICTION

This Court has jurisdiction to issue writs of mandamus, prohibition, and certiorari, and any other writ in the exercise of its judicial authority. See McFadden v. Fourth District Court of Appeal, 682 So. 2d 1068 (Fla. 1996).

III.

PROCEDURAL HISTORY

Mr. Schmidt is a prisoner at the Liberty Correctional Institution located in Bristol, Florida. During the service of his sentence, Mr. Schmidt had sixty days of gain time removed as a disciplinary sanction.

After timely exhausting all administrative remedies challenging the disciplinary report, Mr. Schmidt timely filed a Petition for Writ of Mandamus in Leon County Circuit Court, seeking to have his gain time restored. Respondent Judge John E. Crusoe issued the Case Management Order, which directed Mr. Schmidt to pay a $97.50 filing fee within thirty days if he wished to proceed with the action. See Ex.

A. Mr. Schmidt then filed a Motion to Vacate Order to Pay Filing Fee, on the ground that his petition for writ of mandamus was a collateral criminal proceeding and therefore exempt from the filing fee requirement. See Ex. B; see also § 57.085(10), Fla. Stat. Judge Crusoe denied Schmidt's motion. See Ex. C.

On October 21, 2000, Mr. Schmidt filed a Petition for Writ of Prohibition in the First District Court of Appeal, requesting that it restrain Judge Crusoe from dismissing his Petition for Writ of Mandamus. See Ex. D. In a letter to Jon S. Wheeler, the Clerk of the Court for the First District Court of Appeal, Mr. Schmidt asserted that he should not be required to pay either the trial or appellate court's filing fees to prosecute his action pursuant to section § 57.085(10), Fla. Stat. See Ex. E. On October 25, 2000, Mr. Wheeler directed Mr. Schmidt to pay a $250 filing fee or file an affidavit of insolvency and be liable for costs. See Ex. F.

Mr. Schmidt then filed the Motion to Recall, Quash, and Vacate The Court's October 25, 2000 Order to Pay Filing Fee in the First District Court of Appeal. See Ex. G. On November 27, 2000, the First District denied his motion. On December 6, 2000, Mr. Schmidt filed with this Court his Petition for Writ of

Mandamus and/or Invoking All-Writs Jurisdiction. The Respondents filed their response brief on February 19, 2001. After Mr. Schmidt filed his reply brief on February 28, 2001, this Court appointed the undersigned and directed us to file an amended petition for writ of mandamus on behalf of Mr. Schmidt.

IV.

LEGAL ANALYSIS

The Prisoner Indigency Statute, section § 57.085, Florida Statutes, provides that inmates who do not have sufficient funds to pay in full for certain types of lawsuits upon filing must pay for their lawsuits in installments if and when any funds are deposited into their inmate account. Geffken v. Strickler, 778 So. 2d 975, 976 (Fla. 2001). The statute, however, specifically exempts "collateral criminal proceedings" from its provision, thereby permitting the inmate to proceed with his action without having to pay filing fees. See § 57.085(10), Fla. Stat.

The Florida Supreme Court has analyzed the Florida Indigency Statute in a number of recent cases. Those cases, similar to the case now before this Court, dealt with the issue of determining whether an action challenging a conviction or

sentence is a collateral criminal proceeding under section § 57.085(10), Fla. Stat., and is therefore exempt from the partial payment provisions.

As noted below, this Court noted that the prisoner sanction statutes, sections §§ 944.279, 944.28(2)(a), Florida Statutes, and the Prisoner Indigency Statute were enacted as part of one act that created or amended several statutory provisions for the purpose of reducing unnecessary or frivolous prisoner filings. Geffken, 778 So. 2d at 977. This Court further noted that statutes enacted in the same act and using the same language should be interpreted similarly. Id. Consistent with its decision in Hall v. State, 752 So. 2d 575 (Fla. 2000), this Court concluded that a civil writ that contests a criminal conviction or sentence is a "collateral criminal proceeding" for purposes of the Prisoner Indigency Statute.[1] Geffken, 778 So. 2d at 976.

A. A Writ Petition Seeking Restoration of Gain Time Directly Attacks the Sentence Imposed and Is Therefore a Collateral Criminal Proceeding.

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[1] Hall provided a detailed analysis of the prisoner sanction statutes and noted their inseparability from the Florida Indigency Statute.

This Court stated in no uncertain terms that "writ petitions which contest a criminal conviction or sentence are 'collateral criminal proceedings,' and are exempt from the partial payment provisions of the Prisoner Indigency Statute [section 57.085, Fla. Stat.]." Geffken, 778 So. 2d at 976.

A challenge to restore gain time pertains to the sentence, which, according to the Florida Supreme Court, is a collateral criminal proceeding. By removing sixty days of Mr. Schmidt's gain time, the State has effectively lengthened the amount of time that he will be incarcerated. Thus, pursuant to Saucer and Geffken, Mr. Schmidt's writ petitions seeking the restoration of his gain time constitutes a challenge of his criminal sentence. And since the challenge of his sentence is a collateral criminal proceeding under Florida law, Mr. Schmidt should be permitted to seek restoration of his gain time without having to pay filing fees pursuant to section 57.085(10).

Florida, like many other States, rewards convicted prisoners for good conduct and compliance with prison rules by using a statutory formula that reduces the portion of his sentence that he must serve. The United States Supreme Court,

in considering Florida's application of gain-time rules, has concluded that **gain time is a part of a prisoner's sentence**. See Lynce v. Mathis, 117 S. Ct. 891, 898 (1997). A prisoner's eligibility for reduced imprisonment is a significant factor entering into both acceptance of a plea by a criminal defendant and the judge's calculation of the sentence to be imposed. Weaver v. Graham, 101 S. Ct. 960, 966 (1981). A reduction in a prisoner's gain time lengthens his actual sentence. Id., 101 at 967.

In Lynce, the Florida Attorney General issued an opinion interpreting a 1992 statute as having retroactively canceled all provisional gain time awarded to inmates convicted of murder and attempted murder. 117 S. Ct. at 891-2. The petitioner filed a habeas corpus petition challenging the retroactive cancellation of his provisional gain time on the ground that his sentence has been lengthened. The respondents argued that the retroactive cancellation of provisional gain time bore no relationship to the original penalty assigned the crime or the actual penalty calculated under the sentencing guidelines. The United States Supreme Court, in holding that gain time was part of the petitioner's sentence, stated that "[t]o the

extent that the respondents' argument rests on the notion that . . . gain-time is not 'in some technical sense part of the sentence,' . . . this argument is foreclosed by our precedents [because] . . . gain-time is a determinant of [the] petitioner's prison term, and his effective sentence is altered once this determinant is changed." Id. at 898.

In the instant case, Mr. Schmidt's loss of sixty days of accrued gain time lengthened the amount of time he remains incarcerated. Therefore, his challenge to the gain time calculation is a challenge to his sentence and should be viewed as a collateral criminal matter.

B. Challenges To Unlawful Detention Are Collateral Criminal Matters.

Even if this Court concludes that Mr. Schmidt's challenge to the reduction in gain time is not a direct attack on his sentence, it should still conclude that his challenge is a collateral criminal proceeding for which filing fees should be waived.

The appropriate procedural mechanism for seeking court review on gain time decisions depends on the length of sentence remaining. Habeas corpus is appropriate when the defendant asserts that he would be free from incarceration if

the court restored or recalculated the contested gain time. Mayberry v. State, 685 So. 2d 1326, 1327 (Fla. 2d DCA 1996); Avera v. Barton, 632 So. 2d 167,169 (Fla. 1st DCA 1994). Mandamus is the appropriate remedy if the defendant would have an additional sentence to serve upon recalculation. Id.

Prisoners are entitled to use the habeas and mandamus writs not only to raise ex post facto challenges to rule changes, such as those brought in Weaver and Lynce, but also to challenge administrative decisions regarding forfeiture of gain time. Norman v. Singletary, 698 So. 2d 614 (Fla. 1st DCA 1997). Thus, had Mr. Schmidt been nearer to the end of his sentence, he would have appropriately styled his petition as one for habeas corpus. This Court has noted that it is the subject matter or underlying proceeding and not the "technical classification or denomination" of a pleading, that determines whether an action is a collateral criminal one. Saucer, 779 So. 2d at 263. Regardless of the title of the writ, at its core, a challenge to the forfeiture of gain time is a challenge to unlawful detention.

This Court has previously ruled that the statutory post-conviction remedies that challenge unlawful detention are collateral criminal proceedings. See Saucer,

752 So. 2d at 578-79 (holding that Florida Rules of Criminal Procedure 3.800 and 3.850 proceedings are collateral criminal proceedings). The common law writ of habeas corpus or mandamus used to regain forfeited gain time therefore has the same subject matter as proceedings previously determined to be collateral criminal – freedom from unlawful detention. Therefore, Mr. Schmidt's petition should be treated as a collateral criminal proceeding and be exempt from the filing fee.

C. The Legislature Did Not Intend To Bar Access To Courts For the Unlawfully Incarcerated.

A review of the legislation passed concurrently with section 57.085, Florida Statutes, compels the conclusion that Mr. Schmidt's petition should be heard without the payment of a filing fee. Section 57.085 was part of an Act creating and amending several statutes "for the purpose of reducing unnecessary or frivolous prisoner pleadings." Saucer, 752 So. 2d at 578. Thus, section 57.085 must be construed in pari materia with the other statutes in that Act. See Geffken, 778 So. 2d at 977 (citing Accord Winthrop & Joseph, Inc. v. Marriott Resort Hospitality Corp., 695 So. 2d 789, 791 (Fla. 5th DCA 1997) (statutes passed during same legislative session and relating to same subject matter should be construed in peri

materia)).

The Act that revised section 57.085 shows no evidence of intent to impede access to the courts where the fundamental liberty interest is at stake. To the contrary, the legislature specifically exempted criminal and collateral criminal matters from the additional burdens and penalties imposed for the filing of frivolous civil matters. The Court recognized that these exemptions were "added to reduce the potential [for] . . . improper 'chilling' of a criminal defendant's rights to appeal or otherwise challenge the propriety or constitutionality of the conviction or sentence." Geffken, 778 So. 2d at 978, n.5.

Nothing in the legislative history of section 57.085 supports the conclusion that the Florida Legislature intended the civil filing fee to be a bar to presenting a claim of unlawful incarceration. Instead, it is much more reasonable to conclude that all challenges to unlawful detention, whether presented by way of rule 3.850, rule 3.800, common law habeas, or mandamus, should be treated as collateral criminal proceedings and be exempt from the filing fees.

V.

CONCLUSION

Mr. Schmidt's writ petition for mandamus challenging the gain time calculation is a collateral criminal proceeding because his gain time is inseparable from his sentence. His incarceration was lengthened because of the sanction, and thus his writ petition is analogous to a statutory habeas proceeding, which is deemed collateral. Failing to treat Mr. Schmidt's gain time as a collateral criminal matter is a violation of his fundamental liberty interests and impedes his access to the courts. This result was not contemplated by the Florida Legislature in enacting the Florida Indigency Statute. Accordingly, this Court should find that Mr. Schmidt's challenge to the Department of Corrections gain time calculation is a collateral criminal proceeding and can be pursued without payment of filing fees pursuant to section 57.085(10).

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail this 20th day of July, 2001, to: JON S. WHEELER, Clerk of Court, First District Court of Appeal, 301 Martin Luther King Jr. Blvd., Tallahassee, FL 32399-1850; HON. JOHN E. CRUSOE, Leon County Circuit Court, 301 South Monroe, Tallahassee, FL 32301; and on ROBERT BUTTERWORTH, Attorney General, Florida Attorney General's Office, State Capitol, Tallahassee, FL 32399-1050.

WENDELL T. LOCKE

CERTIFICATE OF TYPEFACE COMPLIANCE

Counsel for Petitioner Schmidt certifies that this brief is typed in 14 point (proportionally spaced) Times New Roman in compliance with Rule 9.210 of the Florida Rules of Appellate Procedure.

STEPHEN F. HANLON
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