

**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.	:	
	:	

**REPLY TO RESPONSE TO AMENDED  
PETITION FOR WRIT OF MANDAMUS**

Pursuant to the Court’s Order of October 9, 2001, and Rule 9.210 of the Florida Rules of Appellate Procedure, Petitioner Daniel Kevin Schmidt (“Mr. Schmidt”) replies to the State’s Response to Amended Petition for Writ of Mandamus. Mr. Schmidt respectfully requests the Court to grant the petition.

**LEGAL ANALYSIS**

**I. The Relief Schmidt Seeks is a Collateral Criminal Proceeding for Purposes of Section 57.085**

The substantive issue before this Court is whether a prisoner’s legal challenge to the removal of gain time credits is a “collateral criminal proceeding” for

purposes of Fla. Stat. §57.085. In this reply brief Mr. Schmidt demonstrates that Respondents' arguments to the contrary are either baseless or circuitous.

**A. Legislative Intent Does Not Compel a Narrow Definition of Collateral Criminal Proceeding**

Respondents' assert on page 8 of their brief that "the Legislature intended a narrow reading of 'collateral criminal proceedings' . . . ." Yet they provide no citation to legislative history to support that assertion. Instead, the legislative history shows that the legislature intended to reduce frivolous and malicious pleadings, but wanted to keep the path clear for matters going to the heart of the criminal justice system, criminal and collateral criminal proceedings.

Mr. Schmidt seeks relief from the filing fee for a civil action in which he seeks to prove that gain time was erroneously taken from him, resulting in an unlawfully extended sentence.<sup>1</sup> Mr. Schmidt did not maliciously file a civil action to

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A discussion of the merits of Mr. Schmidt's underlying claim is inapposite to the issue before this Court. Accordingly, Mr. Schmidt will not respond to Respondent's factual allegations concerning the cause of his removal of gain time credits, although he notes that if permitted to proceed, he does have an evidentiary basis to support his claim that the credits were improperly removed.

embarrass or harass public officers or employees. Nor is he seeking damages from the state for some frivolous harm. While the Respondent may contend that Mr. Schmidt's claim would ultimately be denied, it cannot make a credible argument that Mr. Schmidt's claim was frivolous or malicious.

Respondents' make no effort to argue why the legislature's desire to reduce frivolous and malicious filings requires a narrow reading of the definition of collateral criminal proceeding. Thus, in the absence of a contention that Mr. Schmidt's claim is frivolous or malicious, the legislative history cannot support the Respondents' position.

The prisoner sanction statutes, §§ 944.279, 944.28(2)(a), Florida Statutes, and the Prisoner Indigency Statute, § 57.085, Florida Statutes, were enacted as part of one act that either created or amended several statutory provisions for the purpose of reducing frivolous prisoner filings. Geffken v. Strickler, 778 So. 2d 975, 977 (Fla. 2001). And like the sanction statutes, the Prisoner Indigency Statute does not apply to criminal proceedings or collateral criminal proceedings. See § 57.085(10), Fla. Stat. Instead, these statutes specifically include the same

exclusionary provision that “collateral criminal proceedings” should not be included in these attempts to reduce litigation. Geffken, 778 So. 2d at 977. Since statutes enacted in the same act and using the same language should be interpreted similarly, Id., it is clear that civil writs contesting a criminal conviction or sentence are “collateral criminal proceedings” for purposes of the Prisoner Indigency Statute. Id. at 976.

**B. An Action Seeking Restoration of Gain Time is a Collateral Criminal Proceeding**

The Respondents’ assertion that Mr. Schmidt’s mandamus petition does not attack his sentence is wrong for several reasons.

1. The Petition Attacked Mr. Schmidt’s Sentence:

Mr. Schmidt’s mandamus petition sought restoration of gain-time, which is a part of the prisoner’s sentence. Lynce v. Mathis, 117 S. Ct. 891, 898 (1997). In fact, 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).

Logically then, Mr. Schmidt’s challenge to the Department of Correction’s

gain-time calculation is an attack on his sentence. And since this Court has determined that writ petitions which contest criminal sentences are collateral criminal proceedings for purposes of the Prisoner Indigency Statute, Saucer v. State, 779 So. 2d 261 (Fla. 2001), Geffken, 778 So. 2d at 978, Hall v. State, 752 So. 2d 575 (Fla. 2000), Mr. Schmidt's Petition for Writ of Mandamus is exempt from the filing fee requirement.

2. Respondents' Reliance on South Carolina Law Is Misplaced

In absence of any Florida law to prove the proposition that a gain time challenge is not a collateral criminal proceeding, the Respondents rely heavily on the South Carolina case Al-Shabazz v. State, 527 S.E.2d 742 (SC 2000). In Al-Shabazz, the court was asked to determine whether a challenge to sentencing credits could be pursued under the State's Post Conviction Relief Act ("PCR Act"). It concluded that they could not. From this holding, Respondents leap to the conclusion that this Court must find that gain time challenges in Florida are not collateral criminal proceedings. Respondents' logic is severely flawed.

The Al-Shabazz decision is premised on South Carolina's statutory scheme

for handling post conviction matters – a scheme so different from Florida’s that it renders any comparison useless. The PCR Act combined all forms of post conviction remedy, “common law, statutory or other remedies heretofore available” into one single action to challenge the validity of a sentence of imprisonment. In contrast, Florida inmates retain a variety of avenues for seeking post conviction relief.

In deciding whether an inmate could use the PCR Act to challenge gain time credits, the Al-Shabazz court noted that the statute of limitations in the PCR Act would preclude an inmate from challenging sentence credit decisions made long after conviction. Thus, it determined that the PCR Act was not the appropriate means for a South Carolina inmate to raise a sentencing credits claim holding. It then reviewed South Carolina’s procedures for sentencing credit challenges.

Contrary to Respondents’ assertion on page 11 of their brief, the Al-Shabazz court does not define “collateral criminal proceeding” to exclude a challenge to gain time credits. Instead, it holds that under the PCR Act the challenges **authorized by statute to be included in a PCR claim** do not include gain time challenges.

Al-Shabazz, 527 S.E. 2d at 749. The South Carolina Supreme Court was interpreting a statute, it made no pronouncements as to a common law definition of “collateral criminal proceedings.” Nor was it asked to consider the issue of a sentencing credit challenge in any context concerning the payment of a filing fee.

In sum, while the Al-Shabazz decision provides an interesting look at South Carolina’s post conviction procedures, it brings no light to bear on the issue facing this Court.

## **II. Respondents’ Procedural Arguments Do Not Preclude Relief**

### **A. Mandamus Is the Appropriate Vehicle for Relief**

Mr. Schmidt properly seeks relief via a Writ of Mandamus. Contrary to the Respondents’ assertion, Mr. Schmidt does not seek to establish the existence of an enforceable right, but rather seeks clarification from this Court on the parameters of an existing right. The Florida legislature established the right that Mr. Schmidt seeks to enforce when it enacted section 57.085(10). That law established Mr. Schmidt’s right to proceed on collateral criminal matters without payment of a filing fee. Thus, the issue before this Court is not whether a right exists, but merely how

the term collateral criminal proceeding is defined. Mr. Schmidt therefore correctly selected mandamus as the appropriate vehicle to seek relief.

Moreover, Florida courts have repeatedly held that filing a petition for mandamus with the appropriate court after exhausting administrative remedies is the proper of action for a prisoner, particularly as it pertains to gain time. See Baez v. State, 780 So. 2d 981, 982 (Fla. 4<sup>th</sup> DCA 2001); Clements v. State, 761 So. 2d 1245, 1245 (Fla. 2d DCA 2000); Newsome v. Singletary, 637 So. 2d 9, 11 (Fla. 2d DCA 1994); Hall v. Wainwright, 498 So. 2d 670, 671 (Fla. 1<sup>st</sup> DCA 1986).

**B. The Delay in Mr. Schmidt's Release Date Does Not Preclude Mandamus Relief**

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. While the Respondent is correct in stating that Mr. Schmidt would not entitled to immediate release but for the lost of gain time, the reason for Mr. Schmidt's challenge petition is the same – freedom from unlawful detention at the end of his sentence.

The fact that Mr. Schmidt's challenge will not entitled him to be immediately



released is completely irrelevant. The Respondent's suggestion that unlawful detention is only an issue when seeking immediate release is unsupported by the case law and the legislative intent. Rather, the appropriate procedure for seeking review on gain-time decisions depends on the length of the remaining sentence. Since this proceeding involves the same subject matter as proceedings such as Saucer, where unlawful detention was determined to be collateral criminal, Mr. Schmidt's petition should be treated as a collateral criminal proceeding and be exempt from the filing fee.

**V. Conclusion**

Mr. Schmidt's writ petition for mandamus challenging the gain time calculation is a collateral criminal proceeding because his gain-time is a part of his sentence. His incarceration has been lengthened because of the sanction. 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 15<sup>th</sup> day of October, 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.

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**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.

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