

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Docket No. 11-CR-301
JCN - KEN - 1/27/2012

Richard Morin,

Petitioner

v.

ORDER
(Motion to Dismiss)

State of Maine,

Respondent

This matter is before the Court on Respondent's Motion to Dismiss Petitioner's request for post-conviction relief. In this action, Petitioner maintains that he has not received the proper amount of good time credit on the forty-two month sentence that he is serving on a probation revocation. Based on the affidavit of Patricia Mullen, which is uncontroverted, the dispute is limited to the amount of good time credit allowed for October 2010, when Petitioner received 3 days of good time credit rather than the 5 days to which Petitioner believes he is entitled.

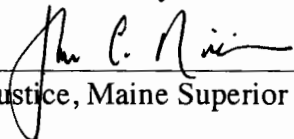
Through its motion, Respondent argues, among other things, that Petitioner's request is barred because Petitioner previously filed a petition for post-conviction relief, which petition was denied. 14 M.R.S. § 2128(3) (2010) provides, "[a]ll grounds for relief from a criminal judgment or from a post-sentencing proceeding shall be raised in a single post-conviction review action and any grounds not so raised are waived unless the State or Federal Constitution otherwise requires or unless the court determines that the ground could not reasonably have been raised in an earlier action."

In February 2011, Petitioner filed a request for post-conviction relief. The Court dismissed the petition on March 21, 2011. Petitioner filed the present petition on April 21, 2011. The record establishes that as of January 2011, prior to the filing of the first petition, Petitioner was aware of the good time credit granted to him for October 2010. Petitioner was aware, therefore, of the ground asserted in this petition at the time he filed the first petition for post-conviction relief.

Because Petitioner knew of the good time credit that he was allowed for October 2010 before he filed his first petition for post-conviction relief, Petitioner cannot now cite in this action the State's failure to grant him proper good time credit for October 2010. *See* 14 M.R.S. § 2128(3) (2010). Accordingly, the Court grants Respondent's Motion to Dismiss, and dismisses the petition for post-conviction relief.

The Clerk shall incorporate this Order into the docket by reference.

Dated: 1/27/12


Justice, Maine Superior Court

RICHARD MORIN
VS
STATE OF MAINE

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2011-00301

DOCKET RECORD

PL. DOB: 12/03/1975

PL. ATTY: ROBERT RUFFNER

ROBERT J RUFFNER ATTORNY AT LAW
415 CONGRESS STREET, SUITE 202
PORTLAND ME 04101
APPOINTED 06/20/2011

State's Attorney: DIANE SLEEK

Filing Document: PETITION
Filing Date: 04/21/2011

Major Case Type: POST CONVICTION REVIEW

Charge (s)

Docket Events:

04/27/2011 FILING DOCUMENT - PETITION FILED ON 04/21/2011

06/15/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO JUSTICE ON 06/14/2011
JOHN NIVISON , JUSTICE

06/15/2011 POST CONVIC. REVIEW - ASSIGNMENT ASSIGNED TO DOCKET ON 06/06/2011
WILLIAM R ANDERSON , JUSTICE

06/21/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 06/20/2011

06/21/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 06/20/2011
ROBERT E MURRAY JR, JUSTICE
COPY TO PARTIES/COUNSEL

06/21/2011 Party(s): RICHARD MORIN
ATTORNEY - APPOINTED ORDERED ON 06/20/2011

Attorney: ROBERT RUFFNER

09/15/2011 POST CONVIC. REVIEW - PCR CONFERENCE SCHEDULED FOR 10/11/2011 at 11:45 a.m.

09/15/2011 POST CONVIC. REVIEW - PCR CONFERENCE NOTICE SENT ON 09/15/2011

10/12/2011 POST CONVIC. REVIEW - PCR CONFERENCE FTA ON 10/11/2011

ROB RUFFNER NEVER CALLED IN.

10/12/2011 POST CONVIC. REVIEW - PCR CONFERENCE SCHEDULED FOR 10/21/2011 at 08:30 a.m.
JOHN NIVISON , JUSTICE

10/12/2011 POST CONVIC. REVIEW - PCR CONFERENCE NOTICE SENT ON 10/12/2011

10/21/2011 POST CONVIC. REVIEW - PCR CONFERENCE HELD ON 10/21/2011
JOHN NIVISON , JUSTICE
Attorney: ROBERT RUFFNER

DA: PAUL RUCHA

11/01/2011 ORDER - COURT ORDER FILED ON 10/26/2011
JOHN NIVISON , JUSTICE

SCHEDULING ORDER: FOLLOWING A TELEPHONE CONFERENCE WITH COUNSEL ON OCTOBER 21, 2011 THE
COURT ORDERS: 1) ON OR BEFORE OCTOBER 28, 2011, PETITIONER SHALL FILE AN AMENDED PETITION.
2) ON NOVEMBER 10, 2011, RESPONDENT SHALL FILE ITS WRITTEN RESPONSE, INCLUDING ANY MOTIONS
THAT IT INTENDS TO FILE, TO THE AMENDED PETITION.

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Printed on: 01/30/2012

11/01/2011 ORDER - COURT ORDER ENTERED ON 10/24/2011

11/09/2011 SUPPLEMENTAL FILING - AMENDED PETITION FILED ON 11/08/2011

11/09/2011 OTHER FILING - OTHER DOCUMENT FILED ON 11/09/2011

DA: PAUL RUCHA

BASED ON THE AMENDED PETITION, THE PETITIONER'S ALLEGATIONS INVOLVE THE DOC. AT THE PRETRIAL CONF., PAUL RUCHA INFORMED BOTH JUSTICE NIVISON AND MR. RUFFNER THAT IF THE ONLY REMAINING ALLEGATION WAS GOOD TIME, THAT THE STATE WOULD BE REPRESENTED BY DIANE SLEEK. SINCE THAT HAS COME TO FRUITION, PLEASE NOTE THAT DIANE SLEEK SHOULD BE THE ATTORNEY OF RECORD. PLEASE INFORM HER OF ANY FUTURE COURT EVENTS.

11/09/2011 Party(s): STATE OF MAINE

ATTORNEY - RETAINED ENTERED ON 11/09/2011

Attorney: DIANE SLEEK

11/14/2011 MOTION - MOTION TO DISMISS FILED BY STATE ON 11/10/2011

DA: DIANE SLEEK

11/17/2011 OTHER FILING - OTHER DOCUMENT FILED ON 11/16/2011

AFFIDAVIT OF PATRICIA MULLEN

11/28/2011 HEARING - EVIDENTIARY HEARING SCHEDULED FOR 12/05/2011 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL

11/28/2011 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 11/28/2011

CERTIFIED COPY TO SHERIFF DEPT.

12/02/2011 HEARING - EVIDENTIARY HEARING NOT HELD ON 12/02/2011

01/17/2012 POST CONVIC. REVIEW - PCR CONFERENCE SCHEDULED FOR 01/20/2012 at 09:00 a.m.

JOHN NIVISON , JUSTICE

01/30/2012 MOTION - MOTION TO DISMISS GRANTED ON 01/27/2012

JOHN NIVISON , JUSTICE

COPY TO PARTIES/COUNSEL

01/30/2012 POST CONVIC. REVIEW - PCR CONFERENCE HELD ON 01/20/2012

01/30/2012 ORDER - COURT ORDER FILED ON 01/27/2012

JOHN NIVISON , JUSTICE

BECAUSE PETITIONER KNEW OF THE GOOD TIME CREDIT THAT HE WAS ALLOWED FOR OCTOBER 2010 BEFORE HE FILED HIS FIRST PETITION FOR POST CONVICTION RELIEF, PETITIONER CANNOT NOW CITE IN THIS ACTION THE STATE'S FAILURE TO GRANT HIM PROPER GOOD TIME CREDIT FOR OCTOBER 2010. ACCORDINGLY, THE COURT GRANTS RESPONDENT'S MOTION TO DISMISS, AND DISMISSED THE PETITION FOR POST CONVICTION RELIEF.

01/30/2012 ORDER - COURT ORDER ENTERED ON 01/27/2012

01/30/2012 FINDING - DISMISSED BY COURT ENTERED BY COURT ON 01/27/2012

A TRUE COPY

ATTEST: _____

Clerk