

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
DOCKET NO PENS-SC-CR-08-377  
KENS-SC-CR-12-1004

WRA-PEN-11-13-14

STATE OF MAINE

v.

ORDER

SCOTT MURRAY


Pending before the Court is the defendant's Motion for Correction of Reduction of Sentence brought pursuant to M.R. Crim. P. 35. As refined by the defendant's attorney, the claim is that the policy of the Department of Corrections (D.O.C.) concerning the eligibility of an inmate for an additional two days of good time is unconstitutional, rendering the inmate's sentence illegal.

On March 12, 2013, the defendant was sentenced on the Kennebec case to two years incarceration at the D.O.C., and as part of his plea agreement, the Court revoked a probation attached to the Penobscot charge and imposed a concurrent two year sentence. The defendant now complains that he is receiving seven days of good time each month as authorized by 17-A M.R.S. § 1253(9) and (10)(A) but asserts that he is entitled to nine. The latter section authorizes an additional two days deduction from the sentence each month upon the inmate's successful completion of certain educational or rehabilitation programs. The D.O.C. has a policy concerning the additional two days that limits its applicability to participation in community-based programs when the inmate has no more than 18 months left on his sentence. Defendant argues that this

policy is inconsistent with relevant statutory provisions and deprives him of 24 days of good time<sup>1</sup>, having the effect of lengthening his sentence by that number of days.

The Court has reviewed petitioner's arguments concerning the legality of D.O.C.'s implementation of the good time statute in question and does not address the arguments because the issue is not properly raised pursuant to M.R. Crim. P. 35. Simply put, the issue does not concern the Court's imposition of sentence, which could be addressed by Rule 35, but concerns D.O.C.'s interpretation of good time statutes only. Furthermore, there is absolutely no hint or indication that the original sentence was influenced by a mistake of fact which existed at the time of sentencing, as required by M.R. Crim. P. 35(c)(2). Finally, it appears to this Court that the proper vehicle to challenge a good time issue such as this is through administrative appeal, since it is obviously not cognizable on post conviction review, according to recent case law and its explicit exemption from that process by 15 M.R.S. § 2121(2).<sup>2</sup>

Dated: November 13, 2014



WILLIAM ANDERSON  
JUSTICE, SUPERIOR COURT

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<sup>1</sup> The Court calculates the number of days lost as a lower number.

<sup>2</sup> The administrative petitioner would be required to first exhaust administrative remedies and then allege that an adverse D.O.C. ruling violated the good time statute, not a non-rule as maintained in this defendant's brief. Additionally, by separate independent claim added to the 80C appeal pursuant to M.R. Civ. P. 80C(i), a due process claim could be litigated.

STATE OF MAINE  
vs  
SCOTT A MURRAY  
3 CH STREET  
GARDINER ME 04345

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CR-2012-01004

**DOCKET RECORD**

DOB: 06/14/1984

Attorney: JAMES LAWLEY  
LIPMAN & KATZ PA  
227 WATER STREET  
PO BOX 1051  
AUGUSTA ME 04332-1051  
APPOINTED 12/21/2012

State's Attorney: EVERT FOWLE

Filing Document: CRIMINAL COMPLAINT  
Filing Date: 12/17/2012

Major Case Type: FELONY (CLASS A,B,C)

**Charge(s)**

1 UNLAWFUL POSSESSION OF SCHEDULED DRUG 12/15/2012 CHELSEA  
Seq 8568 17-A 1107-A(1)(B)(1) Class C  
MILLS / KEN

**Docket Events:**

12/17/2012 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 12/17/2012

12/17/2012 Charge(s): 1  
HEARING - INITIAL APPEARANCE SCHEDULED FOR 12/17/2012 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL

12/18/2012 Charge(s): 1  
HEARING - INITIAL APPEARANCE HELD ON 12/17/2012  
DONALD H MARDEN , JUSTICE

12/18/2012 Charge(s): 1  
HEARING - STATUS CONFERENCE SCHEDULED FOR 02/12/2013 at 10:00 a.m.

12/18/2012 Charge(s): 1  
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 12/17/2012

12/18/2012 BAIL BOND - \$500.00 CASH BAIL BOND SET BY COURT ON 12/17/2012  
DONALD H MARDEN , JUSTICE  
OR PR WITH MAINE PRE-TRIAL SERVICES CONTRACT. NO USE OR POSSESSION OF INTOXICANTS AND  
RANDOM SEARCH AND TEST FOR THE SAME. NO CONTACT WITH ANTHONY GUSHIE AND TODD MCCUTCHEON  
AND NOT TO ENTER THERE RESIDENCE, PLACE OF EMPLOYMENT OR PLACE OF EDUCATION. CURFEW  
FROM 9PM TO 6AM.

12/21/2012 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 12/21/2012

01/03/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 12/21/2012  
DONALD H MARDEN , JUSTICE  
COPY TO PARTIES/COUNSEL

01/03/2013 Party(s): SCOTT A MURRAY  
ATTORNEY - APPOINTED ORDERED ON 12/21/2012

Attorney: JAMES LAWLEY  
CR\_200

0 /2013 Charge(s): 1  
HEARING - STATUS CONFERENCE NOTICE SENT ON 01/03/2013

01/16/2013 LETTER - FROM PARTY FILED ON 01/16/2013

Attorney: JAMES LAWLEY  
LETTER FROM ATTORNEY INDICATING RECEIPT OF COURT APPOINTMENT

02/12/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE HELD ON 02/12/2013  
M MICHAELA MURPHY , JUSTICE  
Defendant Present in Court

02/12/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE SCHEDULED FOR 02/26/2013 at 10:00 a.m.

02/12/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE NOTICE SENT ON 02/12/2013

02/26/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE CONTINUED ON 02/26/2013

DEFENDANT BEING HOUSED IN PENOBSHOT AND NOT TRANSPORTED

02/26/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE SCHEDULED FOR 03/12/2013 at 10:00 a.m.

02/26/2013 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 02/26/2013

CERTIFIED COPY TO SHERIFF DEPT.

02/26/2013 MOTION - MOTION TO AMEND COMPLAINT FILED BY STATE ON 02/26/2013

02/26/2013 MOTION - MOTION TO AMEND COMPLAINT GRANTED ON 02/26/2013  
M MICHAELA MURPHY , JUSTICE  
COPY TO PARTIES/COUNSEL

03/13/2013 Charge(s): 1  
HEARING - STATUS CONFERENCE NOT HELD ON 03/12/2013

03/13/2013 Charge(s): 1  
HEARING - RULE 11 HEARING SCHEDULED FOR 03/12/2013

NOTICE TO PARTIES/COUNSEL

03/13/2013 Charge(s): 1  
HEARING - RULE 11 HEARING HELD ON 03/12/2013

READING WAIVED

03/13/2013 Charge(s): 1  
PLEA - GUILTY ENTERED BY DEFENDANT ON 03/12/2013

03/13/2013 Charge(s): 1  
FINDING - GUILTY ENTERED BY COURT ON 03/12/2013  
JOHN NIVISON , JUSTICE

03/13/2013 Charge(s): 1  
RULING - ORIGINAL ORDERED ON 03/12/2013

INSERTED VIA FEE PROCESSING

It is adjudged that the defendant is guilty of 1 UNLAWFUL POSSESSION OF SCHEDULED DRUG 17-A 1107-A(1)(B)(1) Class C as charged and convicted.

The defendant is sentenced to the DEPARTMENT OF CORRECTIONS for a term of 2 year(s).

Charge #1: It is ordered that the defendant forfeit and pay the sum of \$ 400.00 as a fine to the clerk of the court, plus applicable surcharges and assessments.

10% GOV'T OPERATION SURCHARGE FUND \$ 40.00  
\$ 25 VICTIMS COMPENSATION FUND  
100% GENERAL FUND \$ 400.00  
1% COUNTY JAIL \$ 4.00  
5% GENERAL FUND ADDL 5% SURCHARGE \$ 20.00  
1% MSP COMPUTER CRIMES \$ 4.00  
3% MAINE CRIMINAL JUSTICE ACADEMY 2006 \$ 12.00  
**TOTAL DUE:\$ 505.00.**

03/13/2013 OTHER FILING - FINE PAYMENT SCHEDULE ORDERED ON 03/13/2013

INSTALLMENT PYMTS: 25;DAILY: F;WEEKLY: F;BI-WEEKLY: F;MONTHLY: T;BI-MONTHLY: F;PYMT BEGIN:  
20140320 AT 0;PYMT IN FULL: AT 0;THRU PPO: F;PYMT DUE AMT: 25;PMT DUE: 20140320 AT  
0;OTHER:

03/13/2013 Charge(s): 1

RULING - ORIGINAL ISSUED ON 03/12/2013  
JOHN NIVISON , JUSTICE  
DEFENDANT ACKNOWLEDGES RECEIPT

0 /2013 Charge(s): 1

REQUEST - WAIVER OF INDICTMENT FILED ON 03/12/2013

03/13/2013 Charge(s): 1

REQUEST - WAIVER OF INDICTMENT APPROVED ON 03/12/2013  
JOHN NIVISON , JUSTICE  
IN OPEN COURT

03/13/2013 Charge(s): 1

NOTE - OTHER CASE NOTE ENTERED ON 03/13/2013

TO PUT IN POST CONVICTION

04/19/2013 Charge(s): 1

RULING - AUDIT REPORT LATE FEE ASSESSED ON 04/19/2013

LATE FEE OF \$50 WAS ASSESSED ON \$400.

05/07/2013 Charge(s): 1

AUDIT - AUDIT REPORT DEMAND LETTER SENT ON 05/07/2013

DEMAND FOR PAYMENT LETTER SENT FOR CHARGE# 1

09/26/2013 AUDIT - AUDIT REPORT CHART\_OF\_ACCOUNT EDI ON 09/26/2013 at 02:19 p.m.

APPR:LF; CODE:AS; OLD OVERRIDE AMT:0; NEW OVERRIDE AMT:50; USER:4102

11/27/2013 Charge(s): 1

MOTION - MOTION FOR CORR/REDUCE SNTC FILED BY DEFENDANT ON 11/27/2013

11/27/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 11/27/2013

1 2/2013 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 12/05/2013  
M MICHAELA MURPHY , JUSTICE  
COPIES TO PARTIES/COUNSEL

01/22/2014 Charge(s) : 1  
HEARING - MOTION FOR CORR/REDUCE SNTC SCHEDULED FOR 03/05/2014 at 08:30 a.m.

NOTICE TO PARTIES/COUNSEL

01/22/2014 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 01/22/2014

CERTIFIED COPY TO SHERIFF DEPT.

02/28/2014 LETTER - FROM PARTY FILED ON 02/28/2014

LETTER FILED BY DEF INDICATING HE IS IN MAINE STATE PRISON AND NEEDS A WRIT

03/05/2014 Charge(s) : 1  
HEARING - MOTION FOR CORR/REDUCE SNTC NOT HELD ON 03/05/2014  
M MICHAELA MURPHY , JUSTICE  
CASE BEING TRANSFERRED.

03/05/2014 Charge(s) : 1  
TRANSFER - TEMPORARY TRANSFER GRANTED ON 03/05/2014  
M MICHAELA MURPHY , JUSTICE

03/05/2014 Charge(s) : 1  
TRANSFER - TEMPORARY TRANSFER TRANSFERRED ON 03/05/2014

PENUCD

03/26/2014 Charge(s) : 1  
TRANSFER - TEMPORARY TRANSFER RECVD BY COURT ON 03/06/2014

RECEIVED BY CLERK D. ELLIS

06/24/2014 MOTION - OTHER MOTION FILED BY DEFENDANT ON 06/24/2014

MOTION TO SET HEARING.

09/10/2014 HEARING - CONFERENCE SCHEDULE OTHER COURT ON 10/06/2014 at 08:30 a.m.

PENCD  
TO MOTION FOR CORRECTION OF SENTENCE

09/10/2014 HEARING - CONFERENCE NOTICE SENT ON 09/10/2014

10/24/2014 OTHER FILING - MEMORANDUM OF LAW FILED ON 10/14/2014

DEFENDANT'S MEMORANDUM IN SUPPORT OF RULE 35 RELIEF FILED.

10/24/2014 HEARING - CONFERENCE HELD ON 10/06/2014  
WILLIAM R ANDERSON , JUSTICE  
Attorney: JAMES LAWLEY  
DA: DIANE SLEEK  
202/

10/24/2014 Charge(s) : 1  
MOTION - MOTION FOR CORR/REDUCE SNTC UNDER ADVISEMENT ON 10/06/2014

JUSTICE ANDERSON HAS FILES. DEFENDANT TO FILE MEMO

11/14/2014 Charge(s) : 1  
MOTION - MOTION FOR CORR/REDUCE SNTC DENIED ON 11/14/2014  
WILLIAM R ANDERSON , JUSTICE  
COPIES TO PARTIES/COUNSEL

CONFERENCE AS

1 1/2014 MOTION - OTHER MOTION MOOT ON 11/14/2014

MOTION TO SET HEARING.

11/20/2014 Charge(s): 1

TRANSFER - TEMPORARY TRANSFER RECVD BY ORIG COURT ON 11/19/2014

11/20/2014 ORDER - COURT ORDER ENTERED ON 11/13/2014

WILLIAM R ANDERSON , JUSTICE

THE COURT HAS REVIEWED PETITIONER'S ARGUMENTS CONCERNING THE LEGALITY OF DOC'S IMPLEMENTATION OF THE GOOD TIME STATUTE IN QUESTION AND DOES NOT ADDRESS THE ARGUMENTS BECAUSE THE ISSUE IS NOT PROPERLY RAISED PURSUANT TO MR. CRIM. 35. SIMPLY PUT THE ISSUE DOES NOT CONCERN THE COURT'S IMPOSITION OF SENTENCE, WHICH COULD BE ADDRESSED BY RULE 35, BUT CONCERNS DOC'S INTERPRETATION OF GOOD TIME STATUTES ONLY.

**FINE PAYMENT SCHEDULE**

To pay \$25 monthly beginning 03/20/2014 or warrant to issue.

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk