

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.  
Orlando Bankhead, A308-540  
Chillicothe Correctional Inst.  
P.O.Box 5500  
Chillicothe, Ohio 45601

Relator,

-vs-

TERRY COLLINS, Director  
Department of Rehabilitation  
& Correction.  
1050 Freeway Drive North  
Columbus, Ohio 43229

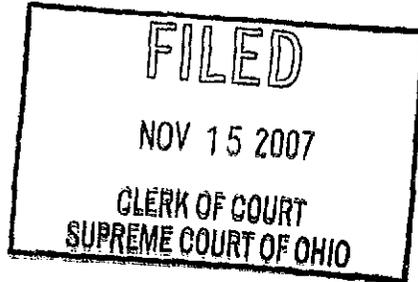
Respondent.

SUPREME CT. CASE NO.

07-2146

PETITION FOR A WRIT OF  
MANDAMUS.

SHOW CAUSE HEARING REQUESTED.



JURISDICTION

Jurisdiction in this matter is conferred upon this Honorable Court, pursuant to Section §2731.01, §2731.04, and §2731.05, of the Ohio Revised Code, and Section I, and 16, of the Ohio Constitution.

Respondent Terry Collins, is the director of the Ohio Department of Rehabilitation and Correction ("ODRC"), as to the propriety of the act of performing the act. A writ of mandamus, lies to compel an officer or agency to act in accordance with required construction of laws and statutes or to show cause as to the contrary of a present existing duty, as to which there is a default. Relator, attached hereto, submits a Memorandum in Support, of his claim for relief.

Respectfully Submitted,

Orlando Bankhead, A308-540

MEMORANDUM IN SUPPORT

**Relator**, Orlando Bankhead, is an incarcerated prisoner confined at the Chillicothe Correctional Institution, located in Ross County, Ohio.

**Respondent**, Terry Collins, is prison Director, and as director, Mr. Collins, is the executive head of the Department of Rehabilitation and Correction. All duties conferred on the various divisions and institutions of the department, by law or by order of the director, are performed under his rules and regulations that Respondent prescribes, are under his control.

Relator, asserts in this instant action, petitions that Respondent Mr. Collins, is under clear duty legally to perform an requested act, and that because of the Respondents failure by law, to do so, Relator has no plain and adequate remedy in the ordinary course of law, to redress his claim.

**I. ARGUMENT**

A writ of mandamus will lie and is available when (1) the relator has a clear legal right to the relief requested, (2) the respondent has a clear legal duty to perform the requested action, and (3) the relator has no plain and adequate remedy in the ordinary course of law. **State, ex rel. Greater Cleveland Regional Transit Authority, v. Griffin** (Cuyahoga 1991) 62 Ohio App. 3d 516, 576 N.E. 2d.

To be granted a writ of mandamus, relator must demonstrate (1) a clear legal right to the relief prayed for, (2) a clear legal duty of the respondent's part to perform the act, (3) and that the relator has no plain and adequate remedy in the ordinary course of law. **Speakman v. State, Dept. of Rehabilitation and Correction** (Franklin 1987) 36 Ohio App. 520 N.E. 2d 600.

To be entitled to a writ of mandamus, relator has the burden of establishing that he has a clear legal right to relief prayed for, and that the respondent has a clear legal duty to perform the requested act, and relator has no plain and adequate remedy in the ordinary course of law. **State ex rel Luna v. Huffman**

(Ohio, 02-07-1996) 74 Ohio St. 3d 486, 659 N.E. 2d 1279.

II. RESPONDENT TO SHOW CAUSE:

Relator states that he appeared before the Institutional Rules Infraction Board ("RIB") for an institutionan rule infraction, and was sanctioned with the loss of good days in 1998, and the loss of good days in 1999. Relator asserts that the loss of his good days earned, was contrary to the law and against the statutory authority for Respondent to do so. Relator states that the loss of his good days were contrary to the law, arbitrary and capricious and disproportionate to the severity of the infraction.

Respondent, alleges that Ohio Revised Code §2967.19(E), authorizes the Respondent, that if a prisoner violates the rules of the institution, in which he is confined, and that he may be denied diminution of his sentence(Good Time) for a specified number of months after the alleged violation. On August 4, 1988, Relator was found guilty by Respondent's Rules Infraction Board("RIB"), of a Class II, Rule 7, violation and Two(2) months of the Relator's good time the Rules Infraction Board("RIB") sanctioned a loss of Relator's earned good time of Twenty Six(26) days were deducted from Relator's sentence.

On December 30, 1998, Relator was found guilty by Respondent's Rulee Infraction Board ("RIB"), of a Class II, Rule 19, violation, and a total of Seventy Eight (78) days were deducted from his sentence, which made him eligible for a parole hearing on September 2, 2008.

Respondent contends that Relator, were sentenced prior to Senate Bill 2, and Senate Bill 2, were not applicable to Relator at the time Respondent imposed the sanction, and that Senate Bill 2, had no statutory provision impact, to the Respondent deducting the loss of good days. Furthermore, it appears that Respondent relies upon House Bill 511, to support Respondent's reasons for the denial and disciplinary measurements.

Ohio Revised Code Section §2967.19, which was in effect at the time of the Relator's sentencing, state:

(A) Except as provided in division (F) of this section a person confined in a state correctional institution is entitled to a deduction from his minimum or definite sentence of thirty percent of the sentence, prorated for each month of the sentence during which he faithfully has observed the rules of the institution. Any deduction earned under this division shall be credited to the person pursuant to division (E) of this section.

(F) A person who is confined in a state correctional institution shall not have his minimum or definite term deminished pursuant to any statute or rule other than this section and sections, §2967.193 or §5145.11 of the Ohio Revised Code. (Emphasis added).

According to section (D)(E), the thirty percent diminution of a prisoner's sentence that is provided in division (A)(B), and (C), of this section and the diminution of a prisoner's sentence that is provided in division (d) of the section shall be prorated on a monthly basis and shall be credited to each prisoner at the expiration of every calendar month. After a prorated diminution has been credited for a given month, it shall not be reduced or forfeited for any reasons. The Department of Rehabilitation and Correction, shall adopt rules that apply uniformly to all state penal and penal institutions, that establish criteria for denying the diminution of a sentence that the prisoner could be credited under this section, identify the violations of the rules of the institution for which the diminution will be denied, and specify the percentage and number of months of denial for each rule violation.

If a prisoner violates the rules of the institution in which he is confined he may be denied the diminution of the sentence. The denial of diminution of a sentence shall be recorded for the prisoner at the expiration of each calendar month for which the diminution is denied.

Here in the case at bar, Mr. Bankhead, received two (2) sets of loss of good time. The first time he received twenty six (26) days loss of good time in 1998.

The second time he received seventy eight (78) days loss of good time in 1999. This was imposed upon him by the Institutional Rules Infraction Board ("RIB"), Committee, for the institutional rule violation. Loss of good time can be imposed upon Mr. Bankhead, according to House Bill 261, but that loss of good time can only be deducted as the diminution at the expiration of each calendar month for which the diminution is denied.

As an example to illustrate Mr. Bankhead's point. If, Relator committed an institutional rule violation in the month of August, the institutional Rules Infraction Board ("RIB"), could only impose the loss of good time days earned for that month, as the diminution at the expiration of that month (August) in which those days were earned and credited for, and not for any other calendar months for which the infraction was not committed. Those days must be deducted towards Relator's expirational parole dates. Under the new Senate Bill, House Bill 2, the diminution is denied at the expiration of the prisoner's sentence which promulgated HB 261, prior to 1998 and 1999, repealed by Senate Bill 2, on July 1, 1996.

Therefore, turning to the construction of law and statute as to the show cause of Respondent's existing duty. Respondent deviated from the statute in accordance with constructive laws, without the statutory authority of the diminution denying the Relator's complaint.

Secondly, if Relator only earned, let's say three (3) days of good time, but committed a rule infraction, he only loses the three (3) days of good time earned, not thirteen (13) days a month as Respondent alleges, because the thirteen (13) days would be **arbitrary, capricious, and disproportionate** to the severity, causing cruel and unusual punishment as prohibited by the 8th Amendment, creating a miscarriage of justice and a disparity in the constitution pursuant to **Article I, Section 10.**

RELIEF

III. Pursuant to Section §2731.01, Relator petitions this Honorable Court, to exercise the extraordinary power of mandamus. This Court, is not limited to consideration of the facts, as they existed at the time of the proceeding initiated, but should take into consideration the facts and conditions existing at the time. *State ex rel. Pecks v. Selby* (Franklin 1993) 50 N.E. 2d 413, 38 Ohio Laws Abs' 427. Relator moves this Honorable Court, to issue a SHOW CAUSE ORDER, to Respondent, as to the claims asserted herein, and affix Relator's parole board date to the proper time of his prior eligible parole hearing date.

Respectfully Submitted,

  
Orlando Bankhead, A308-540  
Chillicothe Correctional Inst.  
P.O.Box 5500  
Chillicothe, Ohio 45601

CERTIFICATE OF SERVICE

I, Orlando Bankhead, hereby certify that a true and correct copy of the foregoing Motion Petition For A Writ Of Mandamus, was sent by regular U.S. Mail, to the Attorney General for the State of Ohio, Marc Dann, at 150 East Gay Street, Columbus, Ohio 43215, on this 12 day of October 2007.

  
Orlando Bankhead, A308-540

AFFIDAVIT OF VERITY

I, Orlando Bankhead, Declare that I am the Respondent []  
Relator  Plaintiff [] Defendant [] Petitioner [] Movant [] in the above  
entitled proceeding.

I Declare under the PENALTY OF PERJURY, as Defined in the O.R.C. §2921.11.,  
that all information submitted herein, is true and correct, to the best of my  
knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Orlando Bankhead  
AFFIANT

# 308 540

P.O.Box 5500

Chillicothe, Ohio 45601

\*\*\*\*\* NOTARY PUBLIC \*\*\*\*\*

SWORN to and subscribed in my presence on this 12 day of October 2007

Teddi Hagans  
Notary Public

6-22-10  
My Commission Expires:



TEDDI HAGANS  
Notary Public State of Ohio  
My Commission Expires  
June 22 2010