

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

ANTOINE ANDERSON,

Petitioner,

v.

CASE NO. CL22-1066

**HAROLD CLARKE, in his official capacity
as Director of the Virginia Department of Corrections**

and

**KEMSY BOWLES, in his official capacity
as Warden of Coffeewood Correctional Center**

Respondents.

DISMISSAL ORDER

This Court, having considered the Petition for Writ of Habeas Corpus, Petitioner's Memorandum in Support, Respondent's Motion to Dismiss, accompanying exhibits, the authorities cited therein, and the arguments advanced by the parties during a hearing on the matter conducted November 18, 2022, issues its ruling in accordance with its previous oral order and pursuant to Code § 8.01-662.

UPON CONSIDERATION THEREOF, the Court makes the following findings:

1. Petitioner, Antoine¹ Anderson (#1338026), is a Virginia Department of Corrections ("VDOC") inmate presently incarcerated at Coffeewood Correctional Center. Anderson has filed this petition for a writ of habeas corpus ad subjiciendum in which he complained that VDOC has failed to properly credit his sentences with the proper amount of good time credit in accordance with Va. Code § 53.1-202.3. Specifically, Petitioner argued that Budget Item

¹ Also referred to in some documents as "Antinne"

404(R)(2) of the 2022 Biennial Budget should not preclude him from earning enhanced sentence credit on time he spent incarcerated prior to July 1, 2022, because Budget Item 404(R)(2) only modifies the application of Va. Code § 53.1-202.3 to time spent “incarcerated between July 1, 2022 and June 20, 2024.”

2. HB5148, codified in Chapter 50 of the 2020 Special Session I Acts of Assembly, and Budget Item 404(R)(2), codified in Chapter 2 of the 2022 Special Session I Acts of Assembly, amended and modified the earned sentence credit system outlined in Va. Code § 53.1-202.3 and went into effect July 1, 2022.

3. Neither HB5148 nor Budget Item 404(R)(2) created a vested or substantive right before their effective date of July 1, 2022.

4. Petitioner did not have any vested right to earn enhanced sentence credits before the effective date of HB5148 on July 1, 2022.

5. Budget Item 404(R)(2) did not affect a substantive right. Budget Item 404(R)(2) modified Va. Code § 53.1-202.3 as written and only narrowed the scope of eligibility to earn enhanced sentence credit.

6. HB5148 and Budget Item 404(R)(2) must be read in combination, including the implementation language of HB5148, and therefore additional retroactive language in Budget Item 404(R)(2) is unnecessary and would be redundant of HB5148’s implementation clause. Accordingly, Budget Item 404(R) applies retroactively in accordance with HB5148’s implementation clause and there is no need for Budget Item 404(R) to include an additional retroactivity clause.

7. Interpreting the language of Budget Item 404(R)(2) as only modifying the application of Va. Code § 53.1-202.3 to time spent “incarcerated between July 1, 2022 and June 20, 2024,” as

Petitioner suggests, would be arbitrary and so capricious as to lead to an absurd result which the legislature did not intend.

8. Because Petitioner has a sentence that is enumerated in subsection (A) of Va. Code § 53.1-202.3, he is not eligible to earn Enhanced Earned Sentence Credits on any other sentence that he is serving concurrently or consecutively to his sentence enumerated in subsection (A).

9. Petitioner's sentence has been accurately calculated in accordance with the applicable Virginia statutes and sentencing orders and has received all appropriate good time credits.

10. The Court therefore finds that all of Petitioner's arguments are without merit and his petition for a writ of habeas corpus should be denied and dismissed.

It is therefore ADJUDGED, ORDERED, and DECREED that the Motion to Dismiss is GRANTED and that the Petition for Writ of Habeas Corpus is DENIED and DISMISSED. The Petitioner is remanded to the custody of the Virginia Department of Corrections.

The Clerk is DIRECTED to strike this matter from the Court's active docket.

It is further ORDERED that the Clerk of this Court shall send an attested copy of this Order to counsel for Petitioner and to counsel for Respondents.

ENTER: 12, 13, 2022

Christ V. Higgins

Judge

I ASK FOR THIS:

Rama Manglar, VSB # 87798

Laura H. Cahill, VSB # 86328
Assistant Attorney General
Office of the Attorney General

w/ permission for:

a true copy TESTE:
JON R. ZUG, CLERK
by: *[Signature]*
Deputy Clerk

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SEEN AND OBJECTED TO* BY:



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*Counsel for Petitioner** Petitioner objects to the Court's findings that (i) neither HB 5148 nor Budget Item 404(R)(2) affect substantive rights; (ii) that Budget Item 404(R)(2) does not require its own retroactivity clause; (iii) that Budget Item 404(R)(2) applies retroactively to time served prior to July 1, 2022; (iv) that to apply Budget Item 404(R)(2) prospectively only would create a result that is arbitrary, capricious and absurd; (v) that Petitioner is not entitled to enhanced earned sentence credits on his eligible sentences for time served prior to July 1, 2022; and (vi) that Petitioner is not entitled to habeas relief. *Petitioner further objects to the Court's implicit finding that the retroactive application of Budget Item 404(R) does not violate the Ex Post Facto and/or Due Process clauses of the U.S. and Virginia Constitutions.*