

August 23, 2022

Harold W. Clarke, Director
Virginia Dept. of Corrections
P.O. Box 26963
Richmond, VA 23261-6963

Dear Director Clarke:

The ACLU of Virginia understands that the Virginia Department of Corrections (VDOC) is currently denying increased earned sentence credits to anyone who has convictions that both are and are not listed among the convictions excluded from eligibility for enhanced earned sentence credits in Virginia Code § 53.1-202.3(A), including for time served prior to July 1, 2022, because it has applied 2022 Budget Item 404(R) retroactively. We demand that VDOC recalculate the time served of those people who have been wrongly denied increased earned sentence credits under the 2020 amendments to Virginia Code § 53.1-202.3.

As described in the attached Petition for Writ of Habeas Corpus and accompanying Memorandum of Law, Budget Item 404(R) is not retroactive. It does not apply to time served prior to the effective date of the budget – i.e., July 1, 2022. In contrast, the 2020 amendments to the earned sentence credit program *are* retroactive. Therefore, people who have served time prior to July 1, 2022 are entitled to increased earned sentence credits for that time served in accordance with their classification level, and the Budget Item may not retroactively deny them those credits.

While the attached filing addresses only one individual case, we know that there are hundreds, if not thousands, of people currently in VDOC custody who have been impacted in the same way by VDOC's erroneous interpretation of Budget Item 404(R). VDOC need not wait for a court to rule on this issue; it should correct its mistake now. The law is clear and the solution is simple – VDOC must recalculate the sentences of those serving sentences for convictions that both are and are not listed in Virginia Code § 53.1-202.3(A). Those people who have earned their release must not spend one more extra day in prison.

We look forward to VDOC's prompt action to remedy this injustice.

Sincerely,



Vishal Agraharkar
Senior Staff Attorney

Enclosures



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