

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

EARL COGDILL, WALTER BRADFORD, )  
MICHAEL GALIOTO, and RODNEY WILLIAMS, )  
Individually and on behalf of all similarly situated persons, )

Plaintiffs, )

v. )

DONALD N. SNYDER, JR., in his official capacity as )  
the Director of the Illinois Department of Corrections, )

Defendant. )

No. 01 MR 1

**ORDER**

This cause comes on for consideration on the cross-motion of each party for summary judgment. Argument has been had with counsel for both parties via telephone.

The facts upon which this action arises are not in dispute. Inmates throughout the Illinois Department of Corrections are eligible for meritorious Good Time (MGT) and, perhaps Supplemental Meritorious Good Time (SMGT). Each such award can be for a period of up to 90 days. The good time provisions are sanctioned by statute (830 ILCS 5/3-6-3) and are implemented within the Department by rule (Ill. Admin. Code 20, Sec. 107.200 et. seq.). The Rule provides that inmates who are incarcerated for certain specific offenses are not eligible for good time of either type. It is also not in dispute that decisions concerning the award of good time are made by the Transfer Coordinator.

Plaintiffs here allege that in addition to the types of criminal conviction which preclude an inmate's consideration for MGT or SMGT, the Defendant uniformly denies good time to any inmate who has been either convicted of domestic battery or who has been the Respondent under an Order of Protection. The testimony of Ms. Egelhoff confirms that this policy is unwritten but uniform as to all like situated inmates. While Defendant does not deny this to have been the case, Defendant argues that as of April, 2001 this has ceased to be the policy of the Department.

Based on the foregoing, there exists no issue of material fact which would bar the award of summary judgment and the disposition of this case on that basis.

The Plaintiffs' primary argument is that the policy – past or perhaps future – of denying good time for instances of domestic battery or order of protection violates the MGT statute. That statute states in pertinent part:

The Department of Corrections shall prescribe rules and regulations for the early release on account of good conduct of persons committed to the Department” 730 ILCS 5/3-6-3

Pursuant to this provision and the rules adopted by the Department (IAC 20 Sec. 107.200) the award of good time is within the discretion of the Director as long as an inmate is not ineligible by statute for it.

This Court has already found that it is appropriate and permissible for the Director to assign his discretion to another. (DeJesus v. Snyder, Sangamon County 00-MR-155) The issue here is whether by having a policy which is applied uniformly to deny good time, the good time decision is being made by the exercise of discretion. The essence of discretion is that each inmate is evaluated individually. The legislature has already determined that for certain inmates, the Director does not have discretion to award good time. The remainder, which includes this class, is entitled to his discretion. The use of a policy to automatically make ineligible for good time a non-statutorily sanctioned class of inmates defeats this discretion.

The Director does have the power to make rules concerning the award of good time and he has done so. He has sought to include his order of protection policy in the rules. In order to do so he must follow the Administrative Procedures Act which he has not done. Defendant's argument that Nolan v. Hillard, 309 Ill.App.3d 129 (1999), is inappropriate is not well taken. The thrust of Nolan, which is also the basis of Plaintiffs' Complaint, is that under the Administrative Procedures Act and, more importantly, under the constitutional requirement of due process, those affected by rules have a right to know what the rules are.

The Defendant argues in opposition to Plaintiffs' Motion for Summary Judgment and in support of his own motion that this action is moot, first because one or more of the named Plaintiffs have been released and second because the Department has abandoned their reliance on their unpublished policy. As to the first point, the Court does not find the issues raised to be moot. If any of the Plaintiffs have been released, they are still on conditional release (parole) and still subject to the jurisdiction of the Department.

As to Defendant's second argument for mootness, the suggestion that the Transfer Coordinator is no longer using a history of domestic violence to automatically bar inmates from the award of good time really substantiates the Plaintiffs' position. In effect, the Defendant admits that a rule was in place but has been revoked. The only way for the public to know and be certain that the “rule” has been revoked was if the rule was formally adopted in the first place. Absent that process, the bare suggestion by counsel for Defendant that the system of awarding good time has changed provides no assurance that it will not revert at a later date.

The Defendant's arguments concerning sovereign immunity are well taken only if the Court were to fashion a remedy requiring the Director to achieve a certain result. This the Court will not do.

The Defendant's argument concerning standing is directed only to Count IV of Plaintiffs' Complaint. Unlike the other Counts of the Complaint which complain of the use of an improper consideration in good time decisions, Count IV seeks to have the Court impose a requirement on the Director to adopt standards by which good time decisions are made. The Court does not choose to address this standing argument because the Court is unwilling to enter an Order for which the Plaintiffs do not have standing.

Plaintiffs are granted summary judgment as to Counts I, II and III. The Court finds that the policy, rule or practice which denies eligibility for consideration for good time to inmates on the basis that the inmate has had a conviction for domestic battery or has had entered against him or her an Emergency or Plenary Order of Protection is not sanctioned by the statute. Moreover, any such policy, rule or practice is not sanctioned by any rule promulgated by the Director in accordance with the Administrative Procedures Act.

The award of good time is solely within the discretion of the Director. That discretion except for the bar to good time set forth in the statute for inmates convicted of certain offenses, is unfettered. It is permissible for the Director (or his assignee) to consider an entire criminal history and an entire social history in making his decision. The Director may properly consider a demonstrable propensity for violent behavior in making a good time decision. It is only ordered, on declaratory judgment, that any rule, practice, or policy which prevents a certain group of inmates who have had either a domestic battery conviction or Order of Protection entered against them from being considered for good time is illegal and of no effect. To the extent Plaintiffs are requesting the Court to tell the Director what he may or may not consider in the exercise of his discretion as to an individual inmate (Count IV), judgment for Plaintiffs is denied.

As declaratory judgment has been awarded in Plaintiffs' favor, the Court will award them reasonable attorneys fees. This award will extend to counsel in Sangamon County OO-MR-155, as a portion of the Plaintiffs in that case have been merged into the class certified in this cause and counsel in that case has participated in this cause. All counsel shall submit their fee applications to the Court within ten (10) days.

The Clerk is directed to send a copy of this Order to Ms. Snyder, Mr. Drake and AAG Corrigan.

ENTERED: October 1, 2001