

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 59

September Term, 2016

KOBIE FARMER

v.

KATHLEEN GREEN, WARDEN

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: April 6, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2015, appellant, Kobie Farmer, an inmate at Eastern Correctional Institution, filed a petition for writ of habeas corpus, in the Circuit Court for Somerset County, in which he claimed that the Division of Corrections (“DOC”) miscalculated the maximum expiration date of his term of confinement by not applying diminution credits he had earned prior to his parole revocation. After the circuit court denied his petition, Farmer noted this appeal. For the reasons to be discussed, we affirm.

On March 24, 2004, the Circuit Court for Baltimore County sentenced Farmer to a term of five years’ imprisonment for forgery. On October 13, 2004, the Circuit Court for Baltimore City revoked Farmer’s probation and ordered him to serve four concurrent eight-year terms of imprisonment, which had previously been suspended, to run “consecutively to the last sentence to expire of all outstanding and unserved sentences.”

Farmer was paroled in June 2010. Prior to his release he had accrued 1,418 diminution credits.¹ While on parole, Farmer committed two new offenses and consequently, he was returned to the custody of the DOC. On December 7, 2012, following a parole hearing, Farmer’s parole was revoked. Thereafter, he was convicted and sentenced for the offenses he had committed while on parole.² The DOC then

¹ Diminution credits “can be earned by inmates to reduce the length of their confinements.” *Frost v. State*, 336 Md. 125, 128 (1994). See §§ 3-701 - 711 of the Correctional Services Article of the Md. Code.

² Farmer was convicted of two separate offenses he had committed while on parole. On January 24, 2013, he was convicted of possession of CDS and sentenced, by the Circuit Court for Harford County, to 120 days of imprisonment. That sentence was later modified to one year, “all suspended.” Because the sentence was suspended in full, it did not trigger the loss of his diminution credits under CS § 3-711. On August 13, (continued)

determined that the maximum expiration date of his total term of confinement was October 30, 2017.

In 2015, Farmer filed a petition for writ of habeas corpus in which he claimed that the DOC erred in calculating his release date because it did not apply the diminution credits he had earned before his parole was revoked. The circuit court concluded, however, that Farmer was not entitled to those diminution credits and denied relief, relying on § 3-711 of the Correctional Services Article of the Maryland Code. Section 3-711 provides:

If an inmate is convicted and sentenced to imprisonment for a crime committed while on parole and the parole is revoked, diminution credits that were awarded before the inmate’s release on parole may not be applied toward the inmate’s term of confinement on return to the Division.

Applying that section in *Jones v. Filbert*, 155 Md. App. 568, 576 (2004), this Court held that, “[u]nder CS section 3-711, inmates convicted and sentenced to confinement for crimes committed while on parole forfeit any diminution credits that they accrued before parole.” In so holding, we noted that the “public policy objective” of the statute was “to deter inmates from committing new crimes while on parole” and “[p]art of the *quid pro quo* between parolees and the State is that parolees who use their freedom to commit other crimes will find themselves reincarcerated without any

(continued)

2013, however, Farmer was convicted of driving without a license and sentenced, by the District Court of Maryland for Baltimore City, to 10 days incarceration, to run consecutive to any outstanding sentence. That conviction and sentence did trigger the loss of his diminution credits under CS § 3-711.

diminution credits they accrued before parole.” *Id.* at 576-577. Accordingly, we hold that the circuit court did not err in concluding that Farmer is not entitled to the diminution credits he had earned before he was paroled.

Farmer, however, seeks to distinguish his case from *Jones* by asserting that this Court upheld the DOC’s decision to not apply Jones’s diminution credits because, *before* his parole revocation hearing was held, Jones was convicted and sentenced for the crime he had committed while on parole, whereas he (Farmer) was not convicted and sentenced for the crimes he had committed while on parole until *after* his parole was revoked. The *Jones* Court, however, did not consider the timing of Jones’s conviction and sentencing in relation to the revocation of parole when it determined that Jones was not entitled to the benefit of his pre-parole credits. 155 Md. App. at 576. Moreover, Farmer’s interpretation of § 3-711, that is, that it applies only if the conviction and sentence for a new crime occurs *before* parole is revoked, is contrary to the intent of the law, which is to deter parolees from committing new crimes while on parole.

Farmer also asserts that the DOC does not have the authority to “revoke” diminution credits because CS § 3-711 merely states that diminution credits earned prior to parole “may not be applied” toward an inmate’s term of confinement if an inmate is convicted and sentenced to imprisonment for a crime committed while on parole. To support his position, Farmer points to CS § 3-709, which addresses “revocation of diminution credits for violations of rules of discipline.” He then concludes that, because the legislature used the phrase “may not be applied” in CS § 3-711, it did not intend to invest the DOC with the authority to “revoke” diminution credits when calculating an

inmate's term of confinement. In our view, Farmer seeks to create a distinction where there is no difference, as the end result of not applying the diminution credits will be the same regardless of the language used. And, as stated previously, by enacting CS § 3-711, the legislature clearly intended that a parolee would lose any diminution credits he or she had earned before release on parole if the parolee is returned to the DOC because of a crime committed while on parole – which is what occurred in Farmer's case.

Finally, Farmer contends that the DOC's decision to revoke his diminution credits violated his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution and Article 24 of the Maryland Declaration of Rights. This claim is without merit. Farmer was returned to the custody of DOC in October 2012 on a parole retake warrant and the decision to revoke his parole followed a parole revocation hearing. Not applying the diminution credits Farmer had accrued, prior to his release on parole, to the maximum expiration date of his term of confinement was done in accordance with CS § 3-711. In sum, the circuit court properly denied his request for habeas corpus relief.

**JUDGMENT OF THE CIRCUIT COURT
FOR SOMERSET COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**