

Supreme Court of Appeals of West Virginia Corrects Amended Law and DOCR Policy

By Stephen H . . . On October 21, 2020, the West Virginia Division of Corrections and Rehabilitation (DOCR) made an internal policy change that doubled many inmates' sentences with sexual offenses and removed them from parole eligibility. All **sentenced** inmates in WV receive obligatory *Good Time* credit ([WV Code §15-4-17](#)) unless the credit is revoked for disciplinary problems. For each day incarcerated, an inmate is awarded one day of *Good Time* credit off the back end of their sentences. The central point of the DOCR's policy was that inmates who violated extended supervision ([WV Code §62-12-26](#)) were not serving a sentence but instead a "sanction," and therefore were not eligible for parole or good time credit. Extended Supervision (aka supervised release) was imposed on most sexual offense convictions in 2003 and added a period of 10-50 years of supervision following any court-imposed incarceration, parole, or probation. As a result of the DOCR policy change, dozens of paroled registrants were issued warrants and rounded up and reincarcerated; some were on parole for over nine months. In addition, inmates still incarcerated from ext. supervision violations were issued new timesheets, removing their parole eligibility dates and effectively doubling their imposed sentences.

The WV legislature followed and sought to amend the good time statute with [Senate Bill 713](#), which was passed and implemented on April 30, 2021. The amendment specifically carved out extended supervision as a class not eligible for *Good Time* credit and made the amendment effective with the DOCR's internal policy change date of October 21, 2020. However, it appeared to be unconstitutional on its face because every person already sentenced with offense dates before the amended

law now potentially faced a longer sentence should they be reincarcerated in the future for an ext. supervision violation.

Imposing a greater sentence after the offense date is called an *ex post facto* constitutional violation. One such individual incarcerated filed a Petition for Writ of Habeas Corpus on *ex post facto* grounds. The Supreme Court of Appeals of West Virginia (SCAWV) has now corrected the unconstitutional amended law. SCAWV agreed with the petitioner that violations of ext. supervision are part of the original sentence and not sanctions, as the DOCR policy change alleged. Now only those original offense dates *after* the new law went into effect, **April 30, 2021**, will lose good time credit if reincarcerated for an ext. supervision violation. They will still be eligible for parole. All those with original offense dates *before* April 30, 2021, will continue to receive good time credit and will also remain eligible for parole.

In order to avoid the constitutional prohibition against ex post facto laws, West Virginia Code § 15A-4-17(a) [2021] shall not be applied to those inmates who committed the underlying crimes for which they are incarcerated pursuant to West Virginia Code § 62-12-26 prior to April 30, 2021, the effective date of the statute, regardless of any contrary language contained therein."

[STATE EX REL. PHALEN v. Roberts, No. 20-1023 \(W. Va. June 16, 2021\)](#)

Additionally, WVRSOL Stephen H. was a guest on the [Registry Matters Podcast RM184](#) giving an analysis of *STATE EX REL. PHALEN v. Roberts*; you can pick up the conversation on the YouTube recording at time mark [41:12 of RM184](#).