



LGIT'S COMMANDER'S LOG

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APPELLATE COURT REVISITS HISTORY OF DIMINUTION CREDITS FOR INMATES COMMITTED TO THE DIVISION OF CORRECTION

QUESTION: Does an inmate committed to the Division of Correction or to a local correctional facility have due process rights to challenge the revocation of diminution credits?

ANSWER: Yes. Regardless of where a pretrial detainee or sentenced prisoner is confined, he or she retains due process rights to challenge the revocation of diminution credits.

CASE: *Fraction v. Secretary, Department of Public Safety & Correctional Services*
Court of Special Appeals, Decided May 8, 2008

In *Fraction v. Secretary*, our Court of Special Appeals considered a Division of Corrections (DOC) inmate's challenge to the revocation of diminution credits made by the Maryland Parole Commission (MPC). It is established that DOC inmates can earn diminution credits known as good conduct, industrial, educational, and special projects credits. When an inmate earns sufficient credits to be entitled to release, the inmate is released. Prior to 1970, inmates released early, because of diminution credits, were treated as if they had served their entire sentence. In 1970, legislation was enacted providing that such inmates "shall, upon release, be deemed as if released on parole until the expiration of the maximum term or terms for which he was sentenced." Maryland Code (1957, 1971 Repl. Vol.), Art. 41, § 127A, (now Correctional Services (C.S.) § 7-502). The MPC is the agency responsible for administering the laws applicable to inmates released on mandatory supervision. In 1970, the release was known as "mandatory release," but since 1989, it is known as "mandatory supervision." Art. 41, § 4-501(13) (now C.S. § 7-501).

The 1970 legislation did not expressly address the disposition of diminution credits in the event of release and subsequent revocation of release. Thus, under the law as it existed at that time, diminution credits were lost by operation of law when the MPC revoked an inmate's mandatory release. In 1989, the legislature amended Art. 41, § 4-612, effective July 1, 1989, to expressly state that the MPC had authority to rescind all diminution credits previously earned on the sentence or any portion thereof. The current provision provides that "[t]he commissioner presiding at an individual's mandatory supervision revocation hearing may revoke any or all of the diminution credits previously earned by the individual on the individual's term of confinement." C.S. § 7-504(b)(1) (2007 Supp.).

As a result of the 1989 law, the MPC adopted Policy 2-24, which provides that it is the MPC's intent that all diminution of sentence credits earned prior to Mandatory Release be rescinded upon revocation of release. The exception will be cases where the Revoking Commissioner expressly states otherwise." The MPC communicated its policy to the Division of Correction (DOC) in February 1990. MPC further advised the DOC, with respect to diminution credits, that

If the Commissioner is rescinding ALL credits, the Commissioner will indicate ALL in the appropriate space.; If the Commissioner is SILENT with respect to the rescission of diminution credits, the DOC is authorized to rescind ALL diminution credits.; If the Commissioner wants to rescind a portion of the credits, the Commissioner will indicate the NUMBER in the appropriate space. The DOC is authorized to deduct the credits in the following order: Good conduct, special credit, industrial, and educational.

In light of this history, the issue in *Fraction* became how does a DOC inmate challenge the disposition of his or her diminution credits. Certainly, a grievance made to the warden of the inmate's correctional institution should be the starting point. If relief is not obtained, the inmate will have to determine the next step. When *Fraction*'s grievance was denied, he pursued it in the Inmate Grievance Office (IGO). However, the IGO was created in 1971 to hear complaints filed by DOC inmates against officials or employees of the DOC or Patuxent Institution arising from the circumstances of custody or confinement. Since the DOC had no discretionary authority in 1990 (the year in which *Fraction*'s mandatory supervision was revoked) with respect to the application of diminution credits if the MPC revoked mandatory supervision, *Fraction*'s complaint was against the MPC, not the DOC. Consequently, the Court of Special Appeals affirmed the dismissal of his grievance against the IGO, and left it to *Fraction* to determine what remedy, if any, remained available to him.

NOTE: The framework for diminution credits in local correctional facilities is also found in the Correctional Services Article. Pursuant to § 11-503, an inmate is allowed a deduction of 5 days from the inmate's term of confinement for each calendar month of presentence confinement during which the inmate does not violate the rules of discipline (good conduct) and labors with diligence and fidelity when the opportunity for labor is available. Pursuant to § 11-504, an inmate is allowed an initial deduction from the inmate's term of confinement for good conduct at the rate of 5 days for each calendar month, beginning from the first day of postsentence commitment to the last day of the inmate's maximum term of confinement. Similar deductions are allowed under §§11-505 and 506 for industrial, agricultural, or administrative tasks, educational and training courses, selected work projects and special programs. Under § 11-507, some or all of the diminution credits awarded for presentence and postsentence good conduct may be revoked for violation of the rules of discipline. However, the revocation must occur for the month in which the violation occurs. Importantly, and similar to their DOC counterparts, inmates committed to a local correctional facility have the ability to challenge the revocation of diminution credits. They may do so through administrative grievance, with the opportunity for hearing. If relief is not obtained, the inmate may then proceed in the courts.

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