

NORTH CAROLINA:

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10-CVS-20351

WAKE COUNTY:

CORNELIUS FORD, PERRY JONES,
et al.,

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT OF
CORRECTION, et al.,

Defendants.

FILED
2011 MAY -9 PM 1:11
WAKE COUNTY, C.S.C.

ORDER Re: **MOTION FOR JUDGMENT ON THE PLEADINGS**

THIS MATTER came on for hearing before the undersigned Judge of Superior Court at the April 4, 2010, civil session of the Wake County Superior Court, upon Plaintiffs' and Defendants' cross Motions for Judgment on the Pleadings pursuant to Rule 12(c), North Carolina Rules of Civil Procedure. Counsel for both sides were present. The Court heard arguments and received briefs in support of the motions as well as other materials.

At the close of the hearing, the Court announced it was taking the motions under advisement. After considering the pleadings, briefs and matters of record, materials submitted, the Court has determined that the Defendants' motion for judgment on the pleadings should be granted and the Plaintiffs' motion for judgment on the pleadings should be denied and a declaratory judgment entered in favor of the Defendants. Here's why.

Procedural and Factual Background

This action was filed on December 10, 2010 seeking a declaratory judgment pursuant to G.S. 1-253, et seq. The plaintiffs are inmates in the Department of Correction ("DOC") and they are asking the Court to declare that G.S. 12-3(12) applies to the calculation of the lengths of their sentences of imprisonment and thus, their projected release dates from the DOC. The defendants filed answer on February 9, 2011 and on March 17, 2011, plaintiffs filed a motion for judgment on the pleadings. On March 29, 2011, defendants filed a motion for judgment on the pleadings.

The relevant facts are not in dispute as evidenced by the complaint and the answer. The plaintiffs are inmates incarcerated in the DOC pursuant to sentences of imprisonment imposed by the Court pursuant to the Structured Sentencing Act, G.S. 15A-1340.10, et seq. ("Structured Sentencing"). Convicted

persons are sentenced to terms of imprisonment under Structured Sentencing using a range of months. G.S.15A-1340.17. For example, a sentence could be for a term of not less than 6 nor more than 8 months, or a term of not less than 12 nor more than 15 months.

The DOC, under its current policy, and to account for the accumulation or loss of sentence reduction credits, converts all sentences into days. Inmates sentenced to terms of less than twelve (12) months are assigned thirty (30) days for each month. Accordingly, a sentence of not less than 6 months nor more than 8 months would provide the inmate with a minimum of 6×30 or 180 days and a maximum of 8×30 or 240 days in DOC.

Here's the rub. Inmates sentenced to terms of twelve (12) months, or more, have the months converted into years. Thus, a twelve (12) month sentence is first converted into a 365 day year. The leftover months for example in a 12 to 15 month sentence – 3 months- are assigned a value of 30 days each. The 12 to 15 month sentence would be 365 days for the first twelve (12) months and 90 days or 3×30 for the last three months for a maximum of 455 days.

From these calculations, the DOC first applies any accumulated jail credits to project an initial release date and then adjusts that date periodically depending on inmates' accumulation or loss of sentence reduction credits.

If the DOC used 30 days for each month, instead of treating each 12 month as a calendar year and converting each 12 months into a 365 day period, the inmate that had received a 12 to 15 month sentence would have only a 450 day maximum sentence as 15×30 equals 450 as opposed to 455. It is the addition of 5 days for each 12 months of initial sentence that is the plaintiffs' problem.

If a prisoner has a sentence of not less than 48 nor more than 58 months, the first 48 months (4 years) would extend the maximum sentence by 20 days as each of the first 48 months would have been converted to 365 day terms. The leftover ten (10) months would be converted to 30 days per month or 300 days.

Reduced to essentials, the plaintiffs want the Court to declare is that **all months of imprisonment pursuant to Structured Sentencing are 30 day months** regardless of the number of years in the sentence. Using the 48 to 58 month sentence as an example, the inmate under the plaintiffs' theory, would have a maximum sentence of 58×30 days or 1740 days instead of the DOC's 1,760 days. 48 months (4years) at 365 days= 1460 plus 10 months at 30 days = 300 days for a total of 1760 days.

When the Structured Sentencing Act was enacted, the General Assembly did not separately define the term "month." Accordingly, the parties must look elsewhere for a definition of the term "month" as it may apply to the Structured Sentencing Act.

The plaintiffs argue that the definition of "month" must be determined by looking at Chapter 12 of the General Statutes which governs construction of statutes. Both plaintiffs and the DOC agree that this issue may be decided by looking to the rules of construction of statutes that are set forth in G.S. 12-3.

G.S. 12-3 contains two separate sections which define the term "month".

G.S. 12-3(3) is the statute on which DOC relies in support of its provision.

G.S. 12-3(3) provides in relevant part: "Month" and "Year" --- The word "month" shall be construed to mean a calendar month, unless otherwise expressed... When a statute refers to a period of one or more months and the last month does not have a date corresponding to the initial date, the period shall expire on the last day of the month.

G.S. 12-3(12) is the statute on which the plaintiffs rely in support of their position.

G.S. 12-3(12) provides: "Imprisonment for One Month," How Construed – the words "imprisonment for one month," wherever used in any of the statutes shall be construed to mean "imprisonment for thirty days."

DECISION

After careful consideration of the briefs, case law and statutes presented, the Court declares:

A. That G.S. 12-3(12) is inapplicable to the situation presented in this case and does not apply to the calculation of inmate sentencing release dates or length of sentences under the Structured Sentencing Act or for that matter, does not apply to the Structured Sentencing Act in any respect.

B. That G.S. 12-3(3) is applicable to the situation presented in this case and does apply to the calculation of inmate sentencing release dates and the length of sentences under the Structured Sentencing Act.

The use by the DOC of 30 days for each month under twelve months and for the leftover months in sentences that are in excess of twelve months is beneficial, and not detrimental, to incarcerated persons in that DOC is not using a calendar month to determine the days of potential incarceration.

While using a 365 day calendar year for each 12 month period of sentence extends the potential sentence 5 days, the use of a calendar year as authorized by G.S. 12-3(3) is permissible and proper.

It is not up to the Court to revise the Structured Sentencing Act or to define the

term "month" as this is a legislative function.

Should the plaintiffs or DOC wish to lobby the General Assembly for a statutory definition of month under the Structured Sentencing Act, they are free to do so.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the defendants' motion for judgment on the pleadings is allowed and the Court concludes and declares as a matter of law:

That G.S. 12-3(12) is inapplicable to the situation presented in this case and does not apply to the calculation of inmate sentencing release dates or length of sentences under the Structured Sentencing Act or for that matter, does not apply to the Structured Sentencing Act in any respect.

That G.S. 12-3(3) is applicable to the situation presented in this case and does apply to the calculation of inmate sentencing release dates and the length of sentences under the Structured Sentencing Act.

That the North Carolina Department of Corrections present policy of calculating inmate release dates as revealed by the record in this case is valid and within the parameters of G.S. 12-3(3).

2. That the plaintiffs' motion for judgment on the pleadings is denied.

This the 9th day of May, 2011.



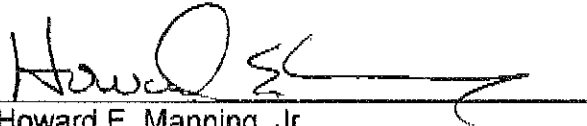
**Howard E. Manning, Jr.
Superior Court Judge**

Certificate of Service

The foregoing ORDER Re: Motion for Judgment on the Pleadings in 10 CVS 20351 was duly served on counsel for the parties by facsimile transmission this the 9th day of May, 2011.

Joseph Finarelli, Esq. at 716-6761

Laura Grimaldi, Esq. at 856-2223
Mary Pollard, Esq.

A handwritten signature in black ink, appearing to read "Howard E. Manning, Jr.", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Howard E. Manning, Jr.
Superior Court Judge