

EDWARD F. HENRY )  
 )  
 Plaintiff/Appellant, )  
 )  
 VS. )  
 )  
 STATE OF TENNESSEE, )  
 )  
 Defendants/Appellees. )

Davidson Chancery  
No. 95-2303-I

Appeal No.  
01A01-9603-CH-00135 August 14, 1996

**FILED**  
  
Cecil W. Crowson  
Appellate Court Clerk

**IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE**

**APPEAL FROM THE DAVIDSON CHANCERY COURT  
AT NASHVILLE, TENNESSEE**

**HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR**

Edward F. Henry #124594  
South Central Correctional Center  
P.O. Box 279, X-F124  
Clifton, Tennessee 38425-0279  
PRO SE/ PLAINTIFF/APPELLANT

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**MODIFIED, AFFIRMED AND REMANDED.**

HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE  
BEN H. CANTRELL, JUDGE

<b>EDWARD F. HENRY</b>	)	
	)	
<b>Plaintiff/Appellant,</b>	)	
	)	<b>Davidson Chancery</b>
	)	<b>No. 95-2303-I</b>
<b>VS.</b>	)	
	)	<b>Appeal No.</b>
	)	<b>01A01-9603-CH-00135</b>
<b>STATE OF TENNESSEE,</b>	)	
	)	
<b>Defendants/Appellees.</b>	)	

**OPINION**

The Plaintiff, Edward F. Henry, has appealed from a judgment of the Trial Court dismissing his “Petition for Declaratory Order Pursuant to Administrative Procedures Act and Declaratory Judgment Act” for failure to state a claim for which relief can be granted.

On appeal, Plaintiff presents a single issue for review as follows:

1. Did the Chancery Court err in dismissing Edward Henry’s petition under the Administrative Procedures Act and Declaratory Judgment Act after the petitioner showed proof through affidavits of work supervisor he was due sentence reduction credits by Tennessee Law?

The order of the Trial Court states:

The petitioner is lawfully in the custody of the Department of Corrections at the Southcentral Correctional Center in Clifton, Tennessee. The petitioner has filed for a declaratory order seeking review of the Department’s calculation of his sentence reduction credits from December 1988 through January of 1992 when he was incarcerated at Cheatham County Jail. The respondent has filed a motion to dismiss the petition in this case on the ground that the petition fails to state a claim upon which relief can be granted against the State of Tennessee.

The petitioner was convicted in Cheatham County, Tennessee and sentenced on November 4, 1988 to twenty years in the Department of Corrections. (Affidavit of Fay Claud). The petitioner was found guilty by a jury of two counts of Aggravated Rape, and two counts of incest with

a minor. The Tennessee Supreme Court reversed the charges of incest because they were barred by the statutes of limitation. The petitioner's current release eligibility date has passed and the expiration date is May 8, 2006. (Affidavit of Fay Claud.)

Tennessee Department of Correction records reflects that Mr. Henry earned a total of 186 days of Prisoner Performance Sentence Credits (PPSC) and 1,081 Prison Sentence Reduction Credits (PSRC) for working and good behavior. The records also reflect that the petitioner signed a waiver effective September 18, 1991, to change from PPSC to PSRC, per the Sentence Reform Act of 1985. (Affidavit of Fay Claud.) Prior to the transfer to the Tennessee Department of Correction, the petitioner earned 186 days of Prisoner Performance Sentence Credits for working, which was prior to the signing of the waiver, and 573 days of Prisoner Sentence Reduction Credits. (Affidavit of Fay Claud.)

The petitioner contests the amount of sentence reduction credits that the Department records reflects that he has earned. The petitioner has made many conclusive statements in support of his petition for declaratory judgment; however, he has failed to put forth any substantial evidence that the Department's calculation of his credit points is incorrect. While the petitioner makes inferences that the Department's records cannot be relied upon, he never gives the Court material evidence to substantiate this claim. The plaintiff must be reminded that it is his burden of proof to show that the Department's records are incorrect. The Affidavit of Charles Sullivan, work supervisor for inmates of the Cheatham County Jail, fails to convince the Court that the Department records are incorrect. Mr. Sullivan simply states that the petitioner worked every day from May 27, 1990 to July 21, 1993. However, Lt. Charlie Blair, Jail Administrator of Cheatham County Sheriff Department, challenges the petitioner's claim that he worked seven days a week during the disputed time period.

The Court finds that the petitioner has failed to prove that he is entitled to any additional Sentence Reduction Credits because he has failed to prove that the Department's records are incorrect. The State's motion to dismiss is granted for failure to state a claim upon which relief can be granted. State Litigation cost is assessed against the petitioner. All other costs are waived.

The petition alleges that Plaintiff was sentenced for a felony; but, instead of delivery to the State Department of Correction, he was confined to the Cheatham County Jail for approximately five years during which he accumulated entitlement to credits to reduce his sentence, but said credits were not accurately certified to the Department of Correction, and he is being wrongfully deprived of such credits.

The petition exhibits a letter from the Jail Administrator of Cheatham which reads as follows:

June 22, 1995

Edward Frank Henry No. 124594  
South Central Correctional Center  
P.O. Box 279, X-F 132  
Clifton, Tennessee 38425-0279

Mr. Henry:

In reply to your recent correspondence concerning your jail Credits: During most of the time in question, Sheriff Dorris Weakley was in charge of the Department with his wife Mrs. Erma Weakley who granted all good time, sentence reduction etc, for convicted felons. Upon the death of Sheriff Weakley and the retirement of Mrs. Weakley, these matters were handled by them alone.

I was not personally involved or had any knowledge of these occurrences until I given the task in April 1992. I have not been able to locate any of Mrs. Weakley's records concerning this matter.

For your information however, our jail intake records reflect That you were incarcerated January 17, 1987 at 12:55 AM on the charge of Agg. Sexual Battery. You were released on Property Bond on January 17, 1987 at 3:15 PM.

You were convicted of the charge October 22, 1987 and returned to our custody at 5:37 PM to await sentencing and your bond was revoked.

On November 04, 1988 you were sentenced to forty (40) Years on this conviction and remained in our custody until May 21, 1993 at which time you were transported to the Tennessee Department of Corrections.

In reply to your Petition, I doubt very seriously that you were allowed Trustee Status or worked outside the facility while awaiting sentencing. (10/22/87) through 11/04/88). How soon after November 1988 you were allowed to become a trustee is not known to me for as I stated I have not been able to locate any of these records. I can however verify that you were assigned to Mr. Charles Sullivan at the Cheatham County Maintenance Department until your transfer to T.D.O.C.

My records reflect that you were given sentence reduction credits of two for one plus behaviour credits each month after it became my responsibility to submit them (April 1992). I also have records to disclaim your statement in the petition that you worked seven days a week for five years. You were granted numerous passes for both the entire weekend and on a daily basis from 1990 until the present Sheriff (Chandler) stopped

the passes in February 1993.

I am sure that Central Records should have copies of the jail credits given you by Sheriff and Mrs. Weakley, and please feel free to use this letter to verify that you were in our custody during the dates indicated. If the State of Tennessee wishes to give you two for one credits for the time in question please be assured that this administration or District Attorney will not object.

(Signed) \_\_\_\_\_  
Lt. Charlie Blair  
Jail Administrator  
Cheatham County Sheriff's Department

If the statements of the foregoing letter be considered allegations of the petition, the petition does contain allegations of fact which would support an administrative proceeding to determine what credits, if any, were earned while in custody of the former Cheatham County Sheriff and not certified to the Department of Correction.

Since the petition does not allege that this issue has been presented to and refused by administrative authority, the petition shows on its face that it is premature. T.C.A. § 4-5-223, 4-5-322.

Plaintiff filed evidence in this cause which should first be presented to and considered by the administrative agency.

The judgement of the Trial Court is modified to provide that the decision is without prejudice to the presentation of the same issues to the proper administrative authority, and to tax all Trial Court costs against the Plaintiff. As modified, the judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the appellant. The cause is remanded to the Trial Court for any necessary further procedures.

**MODIFIED, AFFIRMED AND REMANDED**

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HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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SAMUEL L. LEWIS, JUDGE

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BEN H. CANTRELL, JUDGE