

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 12-CI-1208**

**ANTONIO ARRIOLA, et al.,
individually and on behalf of all others similarly situated**

PLAINTIFFS

v.

COMMONWEALTH OF KENTUCKY, et al.,

DEFENDANTS

FOURTH AMENDED CLASS ACTION COMPLAINT

Plaintiffs Antonio Arriola, Keath Bramblett, Christopher Hopper, Walter A. Noland, Donald Roberts, and David Voyles, individually and on behalf of all others similarly situated, complain of Defendants identified above, and respectfully show as follows:

I. Parties

1. Plaintiffs Arriola, Bramblett, Hopper and Noland are currently inmates in the care and custody of Defendants Commonwealth of Kentucky, Kentucky Justice and Public Safety Cabinet (“the Cabinet”), and the Kentucky Department of Corrections (“KDOC”) (hereafter collectively referred to as the “Institutional Defendants”). All have exhausted their available administrative remedies in connection with the issue made the subject of this litigation – their statutory right to 90 days’ sentence credit in return for completing one of the programs listed in KRS 197.045(1)(a)(2) and (3). Proof of such Plaintiffs’ exhaustion of the administrative remedies available to them was attached as Exhibits 1-4 to their original complaint herein, which by reference is fully made a part hereof.

2. Plaintiff Donald Roberts was the named Plaintiff in *Roberts v. Thompson*, No. 2011-CA-1950-MR (Ky. App. September 14, 2012), in which as a *pro se* plaintiff, he challenged Defendants’ interpretation of KRS 197.045(1)(a)(2) as affording them discretion in the awarding

of sentence credit. Mr. Roberts prevailed, and his position was vindicated, in a Court of Appeals decision entered September 14, 2012, and attached to Plaintiff's motion for class certification as Exhibit 4. Defendants have now withdrawn their motion for discretionary review of the Court of Appeals' decision and have represented to this Court that they have finally "started to comply" with at least KRS 197.045(1)(a)(2). Mr. Roberts was formerly an inmate in Kentucky penal institutions, but has been released and is no longer in the custody of the Institutional Defendants.

3. Plaintiff David Voyles was formerly an inmate in Kentucky penal institutions, but has been released and is no longer in the custody of the Institutional Defendants.

4. Defendant KDOC is charged with the care, the custody, and the award or denial of sentence credit to Plaintiffs and others similarly situated. KDOC is a division of Defendant the Cabinet, which in turn is a governmental subdivision of Defendant the Commonwealth of Kentucky.

5. Individual Defendant Brown is Secretary of the Cabinet, is responsible for the training and supervision of employees of the Cabinet and the KDOC, and is responsible for their recognition of and compliance with Kentucky laws.

6. Individual Defendant Thompson is Commissioner of the KDOC, is responsible for the training and supervision of employees of the KDOC, and is responsible for their recognition of and compliance with Kentucky laws.

7. Individual Defendant Erwin is Deputy Commissioner of Adult Institutions and supervised the work of KDOC's Education Branch, is responsible for the training and supervision of employees of the KDOC Education Branch, and is responsible for their recognition of and compliance with Kentucky laws.

8. Individual Defendants Slempp, Cropp and King are employed in KDOC's Education Branch, and were responsible for granting and denying sentence credit to Plaintiffs and all others similarly situated. Defendant Slempp was Defendant Cropp's supervisor.

9. All of the individual Defendants herein, along with other individual defendants whose identities may be disclosed in discovery, were responsible for interpreting KRS 197.045(1)(a)(2) and (3) as affording them discretion in the awarding of sentence credit, when the plain language and court interpretations of the statute made clear they lacked such discretion.

II. Venue and Jurisdiction

10. Because the cause of this action arose as a result of acts undertaken by Defendants in Franklin County, venue and jurisdiction in this Court are proper.

III. Facts

11. KRS 197.045(1)(a)(2) and (3) specifically provides:

(1) Any person convicted and sentenced to a state penal institution:

(a) Shall receive a credit on his or her sentence for:

* * *

2. Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year degree in applied sciences, a completed technical education program, or an online or correspondence education program, each as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or technical education program completed; and

3. Successfully completing a drug treatment program or other evidence-based program approved by the department, in the amount of not more than ninety (90) days for each program completed[.]

12. Plaintiffs were all denied sentence credits, in violation of KRS 197.045(1)(a)(2) and (3), after successfully receiving a technical education diploma provided and defined by the

KDOC, and after completing a drug treatment program or other evidence-based program approved by the KDOC. Some, like Plaintiff Bramblett, had sentence credit taken away after it had already been awarded. In other instances, Plaintiffs were advised that they were denied sentence credit (or had it taken away) because their diploma was in an area similar to one for which they had previously been awarded sentence credit.

13. In *Mercer v. Commonwealth*, Civil Action No. 05-CI-01714 (Franklin Circuit Court Div. I 2007), attached to Plaintiff's original complaint as Exhibit 5, this Court held *in 2007* that denial of sentence credit can amount to a deprivation of due process in violation of the Fourteenth Amendment to the United States Constitution. In that case, this Court specifically directed that Defendant KDOC award Mr. Mercer sentence credit for a diploma, despite the fact that it bore a similarity to another diploma for which he had already received sentence credit, because "KRS 197.045 clearly makes the award of EGT credit¹ *mandatory* upon a prisoner's completion of one of the listed educational programs. *The [KDOC] does not have discretion to deny an application for EGT credit where the applicant completed one of the educational programs listed in the statute.*" (Emphasis added).

14. In a February 25, 2011 letter to Plaintiff Bramblett, attached to Plaintiff's original complaint as Exhibit 6, the Cabinet acknowledged that the Court in *Mercer* had directed that sentence credit be awarded Mr. Mercer for a diploma "in the same subject area" as one for which he had previously received sentence credit. However, the Cabinet took the position that the Court's

¹ "EGT credit" stands for "Education Good-Time credit." Although KRS 197.045 refers only to credit an inmate is to receive on his or her sentence, and nowhere mentions "educational good-time credit," EGT appears to be a term referring specifically to those sentence credits awarded pursuant to KRS 197.045(1)(a)(2) and (3), as distinguished from the "meritorious good-time credit" available under KRS 197.045 (1)(b). See, e.g., *Martin v. Chandler*, 122 S.W.3d 540 (Ky. 2003).

decision in *Mercer* had no applicability to Plaintiff Bramblett's circumstances because the Court's ruling "applied only to Mr. Mercer's case." No such limitation can be found or read into the Court's decision in *Mercer*. Later in the same letter, the Cabinet expressly acknowledged that sentence credit under KRS 197.045(1)(a)(2) is in fact mandatory, not discretionary.

15. In the meantime, Plaintiff Roberts had filed and was litigating his *pro se* action against Defendants for denial of sentence credit in violation of KRS 197.045(1)(a)(2). Although his action was dismissed by the circuit court, the Court of Appeals reversed in a decision entered on September 14, 2012, finding, like this Court in *Mercer*, that KRS 197.045(1)(a)(2) afforded no discretion in the awarding of sentence credits. Although Plaintiff Roberts is no longer incarcerated, his release was delayed by as much as 90 days because of Defendants' failure and refusal to comply with the clearly-established law.

16. The language of KRS 197.045(1)(a)(3) is no less ambiguous. The denial of sentence credit to Plaintiffs violates the plain and mandatory language of KRS 197.045(1)(a)(2) and (3), Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution, and the law clearly established in this Court's opinion in *Mercer* and, now, *Roberts*.

17. To the extent there exist any policies, customs or practices by which Defendants deem a diploma ineligible for sentence credit because it is too similar to one for which an inmate has already been awarded sentence credit, such policies, customs and practices not only violate the plain and mandatory language of KRS 197.045(1)(a)(2) and (3), but are ambiguous and undefined, lack any educational or academic merit or legitimacy, are subject to inconsistency and abuse in their application, and are arbitrary and capricious or are applied in a manner that is arbitrary and capricious, all in violation of Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution.

18. Defendants' conduct as a practical makes no sense, and is entirely inconsistent with the purposes of KRS 197.045(1)(a)(2), which include but are not limited to:

(a) **the *social benefit*** of educating sentenced offenders and thus increasing the likelihood of their gainful employment and their return to society as productive, tax-paying citizens after their release;

(b) **the *institutional benefit*** of maintaining security and order in Kentucky's penal institutions by encouraging inmates to devote their time to academic endeavors requiring that they maintain discipline and good behavior; and

(c) **the *governmental benefit*** of saving tax dollars by reducing inmate populations through the early release of deserving inmates who have pursued and obtained degrees and diplomas defined in, and obtained the sentence credit offered by, KRS 197.045(1)(a)(2) and (3).

As a consequence, Plaintiffs believe that discovery will disclose that Defendants' interpretation of the statute has nothing to do with its plain, mandatory language, but is motivated by interests other than those embodied in the statute.

19. Finally, as highlighted by Plaintiffs Roberts and Voyles, Defendants' failure to comply with KRS 197.045(1)(a)(2) and (3) significantly delayed their release from custody, causing them significant injury and monetary damages. Plaintiffs believe there are many more inmates in the circumstances of Plaintiffs Roberts and Voyles, whose release was wrongfully delayed, or who are still serving time, due to Defendants' violation of the statute.

IV. Relief Sought

A. Declaratory Relief

20. An actual controversy thus exists between Plaintiffs and Defendants as to the proper interpretation to be given KRS 197.045(1)(a)(2) and (3) under the circumstances of this case, and its primacy over any conflicting policies, customs and practices of Defendants. Plaintiffs therefore request that this Court make a binding declaration, pursuant to the authority granted the Court by KRS 418.040, that Defendants have no discretion to deny any inmate sentence credit upon completion of one of the educational or behavioral modification programs listed in KRS 197.045(1)(a)(2) and (3).

B. Injunctive Relief

21. Plaintiffs also request that the Court, after hearing, grant them and all others similarly situated binding and permanent injunctive relief, enforced by the contempt powers of this Court, enjoining Defendants from denying any inmate sentence credit upon completion of one of the educational or behavioral modification programs listed in KRS 197.045(1)(a)(2) and (3), requiring that all sentence credits previously denied or taken away in violation of the statute be restored, and requiring the immediate release of inmates who have completed their sentences under a lawful interpretation of the statute.

C. Damages

22. Plaintiffs Roberts and Voyles, individually and on behalf of all others similarly situated, request that the Court award them and all other persons whose release from custody was delayed by the violation of KRS 197.045(1)(a)(2) and (3), actual damages from the individual Defendants Brown, Thompson, Erwin, Slemp, Cropp and King to compensate them for their injuries. The individual Defendants' conduct:

- (a) Was negligent, grossly negligent, and fraudulent;
- (b) Was responsible for the unjust, wrongful and false imprisonment of Plaintiffs Roberts and Voyles and all others similarly situated;
- (c) Constituted an abuse of public office in violation of KRS 522.010 *et. seq.*, false statements in violation of KRS 523.010 *et seq.*, and abuse of and malfeasance in office in violation of Kentucky statutory and common law; and
- (d) Violated the rights of Plaintiffs Roberts and Voyles and the class they represent under Sections 1, 2, 10, 17, and 25 of the Kentucky Constitution's Bill of Rights.

Plaintiffs Roberts and Voyles, individually and on behalf of all others similarly situated, also request an award of punitive damages against such individual Defendants to deter the flagrant disregard of the clearly-established law exemplified by their conduct in this case.

V. Class Action

23. Plaintiffs bring this action as a class action pursuant to CR 23.02(b) because Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole. **The class consists of all persons serving or who will serve sentences in Kentucky penal institutions**, as many have taken, or may contemplate or be contemplating taking, one of the educational or behavioral modification programs listed in KRS 197.045(1)(a)(2) and (3). The class is so numerous that joinder of all members is impracticable. Given the narrow definition of the class, it is clear that there are questions of law and fact common to the class and that Plaintiffs' claims are typical of those of the class. Moreover, certification of this case as a class action is also obviously necessary to forestall any further argument by Defendants that this Court's rulings on the matter apply only to a particular named plaintiff.

24. Plaintiffs Roberts and Voyles also seeks certification of a class action pursuant to CR 23.02(a) and (c) for recovery of actual and punitive damages. **The class consists of all persons whose release from state correctional custody was or is delayed by the individual Defendants' denial of sentence credit in violation of KRS 197.045(1)(a)(2) and (3).** This class, too, is believed so numerous that joinder of all members is impracticable. Given the narrow definition of the class, it is clear that there are questions of law and fact common to the class and that Plaintiffs Roberts' and Voyles' claims are typical of those of the class.

25. Plaintiffs will fairly and adequately protect the interests of all class members. Plaintiffs will aggressively pursue the interests of the entirety of the classes. Plaintiffs' interest in obtaining declaratory and injunctive relief and damages is consistent with and not antagonistic to those of any other person within their class. Finally, Plaintiffs are represented in this litigation by counsel having extensive experience not only in the area of inmates' rights, but in class action litigation.

WHEREFORE, Plaintiffs respectfully request:

1. Certification of this case as a class action;
2. A binding declaration that Defendants have no discretion to deny any inmate sentence credit upon completion of one of the educational or behavioral modification programs listed in KRS 197.045(1)(a)(2) and (3);
3. A permanent injunction prohibiting Defendants from denying any inmate sentence credit upon completion of one of the educational or behavioral modification programs listed in KRS 197.045(1)(a)(2) and (3), requiring that all sentence credits previously denied in violation of the statute be restored, and ordering the release of

all persons still incarcerated who have satisfied their debt to society pursuant to KRS 197.045(1)(a)(2) and (3);

4. An award of actual and punitive damages to all persons whose release from state custody was or is being delayed by the individual Defendants' violation of KRS 197.045(1)(a)(2) or (3);
5. An award of attorney fees, costs and expenses incurred in this action, and interest on all sums awarded at the maximum rate permitted by law; and
6. All such other and further relief to which Plaintiffs and the classes may show themselves entitled under law.

Respectfully submitted,

Gregory A. Belzley
Camille A. Bathurst
BelzleyBathurst Attorneys
P.O. Box 278
Prospect, KY 40059
502/292-2452
gbelzley@aol.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, this 7th day of July, 2014, to:

John Marcus Jones
Kentucky Department of Corrections
275 East Main Street
Frankfort, KY 40602-2400

Counsel for Defendants

Gregory A. Belzley