UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

KEVIN LINDKE, MICHAEL SCHULTZ
and all those similarly situation,
Plaintiffs,

vs.

Case No. 22-cv-11767
Honorable Matthew F. Leitman

MAT KING, in his official and personal capacities, TIMOTHY DONNELLON, in his official and personal capacities, COUNTY OF ST. CLAIR, TRACY DECAUSSIN, in her official and personal capacities, and THOMAS BLISS, in his official and personal capacities,
Defendants.

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, County of St. Clair, Tim Donnellon, Mat King, Tracy DeCaussin and Thomas Bliss (hereinafter "Defendants"), by and through their attorneys, Fletcher Fealko Shoudy & Francis, P.C., and hereby move this Court for summary judgment pursuant to Federal Rule of Civil Procedure 56 for the reasons set forth in the Brief in Support of Motion for Summary Judgment.

Concurrence was previously sought in the relief requested, but counsel for Plaintiff did not concur thereby necessitating this motion.

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DATED: January 18, 2024

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BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Question No. 1:

Should the Court dismiss Plaintiffs' complaint since MCL 51.282 does not apply to criminal contempt sentences issued in civil cases?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 2:

Are Defendants entitled to quasi judicial immunity because the contempt of court sentencing orders issued by the Judge specifically stated that Plaintiffs were not entitled to good time credit?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 3:

Are Plaintiff Schultz' claims barred by *Heck* because he has not obtained a reversal of his sentencing order?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 4:

Are Plaintiff Schultz' claims, and part of Plaintiff Lindke's claims barred because they failed to comply with the Good Time Statute's requirement that they bring their entitlement to early release to the attention of the Sheriff or his Deputies?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 5:

Are Plaintiff Lindke's claims barred because he did not have an entitlement to Good Time credit since he was convicted of multiple jail rule violations?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 6:

Should Plaintiffs' claim for monetary damages be dismissed since the statute upon which his alleged constitutional right was a limited one that did not permit the recovery of monetary damages?

Defendants state:	Yes
Plaintiffs state:	No

Question No. 7:

Are Plaintiffs' claims against Defendants in their individual capacities barred by qualified immunity?

Defendants state:	Yes
Plaintiffs state:	No

CONTROLLING OR MOST APPROPRIATE AUTHORITY FOR RELIEF SOUGHT

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INTRODUCTION

Plaintiff Kevin Lindke filed the original lawsuit on August 1, 2022 against St. Clair County, former Sheriff Timothy Donnellon, and current Sheriff Mat King (ECF No. 1). On October 6, 2022, Plaintiffs filed an amended complaint which added Plaintiff Michael Schultz and Defendants Tracy DeCaussin and Thomas Bliss (ECF No. 13). In the amended complaint, Plaintiffs allege that they (and others) were improperly denied "good time" credit available to jail inmates by Michigan Statute (MCL 51.282), and, thus, they served longer periods of time in jail then they should have based upon a jail policy that they claim was unlawful.

The remaining claims in Plaintiffs lawsuit raised pursuant to 42 U.S.C. §1983 allege violations of the Fourth and Fourteenth Amendment to the United States Constitution under a "Failure of Timely Release – Due Process, Substantive Due Process, Procedural Due Process, Equal Protection, and Unreasonable Seizure theories (ECF No. 13).

Many of the arguments raised by Defendants were raised at the Motion to Dismiss stage, but were denied without prejudice and Defendants were afforded the opportunity to re-raise the same arguments and any new arguments following the close of discovery. Defendants now move for summary judgment pursuant to Federal Rule of Civil Procedure 56 on the following grounds:

1. MCL 51.282 does not apply to contempt sentences arising out of civil cases.

2. Even if the Court rules that MCL 51.282 applies to contempt sentences Plaintiffs' claims must be dismissed for the following reasons:

    a. Defendants are entitled to quasi-judicial immunity because the facially valid sentencing orders specifically ordered that Plaintiffs were not to be provided good time credit for an earlier release;

    b. Plaintiff Schulz claim is barred by *Heck* because he never obtained the reversal of his sentencing order;

    c. Plaintiff Schulz and Plaintiff Lindke (as to 2 out of the 3 sentences raised in the complaint) failed to meet the statutory prerequisite for good time credit by requesting an early release while at the jail.

    d. Since Plaintiff Lindke had numerous adjudicated and final jail rule violations, he was not entitled to good time credit and thus did not have a constitutional right to an early release.

    e. Because of numerous concurrent sentences and other holds, Plaintiff Lindke never had a time period where good time credit would have resulted in an early release even if it was fully provided to him.

3. Defendants are entitled to qualified immunity as to the claims against each of them in their individual capacities.

UNDISPUTED FACTS

A. Michigan Criminal Code and Contempt of Court Sentences

1. In accord with its power as to criminal acts, the Michigan legislature has enacted a comprehensive criminal code known as "the Michigan Penal Code" which defines what acts or omissions constitute a crime punishable by a term of imprisonment and/or fine. See MCL 750.1 et seq. Under the Code, crimes are divided into either a felony or a misdemeanor, see MCL 750.6, and the Penal Code sets a punishment for each criminal violation. See MCL 750.1 et seq.

2. A "contempt of court" sentence is not part of the criminal code but instead is an inherent power possessed by a Judge and codified in the Revised Judicature Act of 1961. MCL 600.1 et seq. The RJA recognizes generally that a judge has the power to make any order proper to fully effectuate its judgments and specifically recognizes the court's inherent contempt powers to punish by fine or imprisonment for a wide range of behavior. See MCL 600.611 and MCL 600.1701; MCL 600.1701(a) (f)-(g).

3. Under the statute, contempt of court is divided into two types of contempt: (1) "criminal contempt," which is to punish those who misbehave (e.g., failing to follow the order of the court) by imprisonment of up to 93 days; and (2) "civil contempt," which is the failure to perform an act or duty that is still within the power of the person to perform where the imprisonment is indefinite and terminates when the person performs the act or duty. See MCL 600.1715. At issue in this case are individuals sentenced for criminal contempt in civil cases.

4. The RJA also grants the Court express powers to find a party in contempt of court in specific civil proceeding for violations of its orders. See, e.g., MCL 600.2950(23)(a person "who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, must be imprisoned for not more than 93 days and may be fined not more than $500.00").

5. However, the Michigan Supreme Court has held that the inherent power of the judiciary to punish for contemptuous behavior is set forth in Article VI, Section 1 of the Michigan Constitution and "cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it". See *In re Huff*, 352 Mich. 402, 415-16 (1958); *Mick v. Kent County Sheriff's Dep't (In re Estate of Bradley)*, 494 Mich. 367, 394-95 and nn.63-64 (2013).

6. Thus, there are two types of reasons for which an individual can be imprisoned based upon a judicial sentence: conviction of a "crime" in a criminal case within an indeterminate sentence limited by the legislature, and conviction of "contempt of court" in a civil case, i.e., criminal contempt, which is based upon the inherent powers of the Court and cannot be limited by the legislature. When the sentence is for a "maximum" period of 1 year or less, the commitment is to the county jail run by a County Sheriff; when the sentence is for a period in excess of 1 year, the commitment is to a state penal institution. MCL 769.28.

B. Michigan Statutory Authority on "Good Time" Credit

7. The State of Michigan originally enacted a comprehensive statute governing its state prison system, referred to as the "Prison Code" which included a section that provided that "every convict who shall have no infraction of the rules of the prison or the laws of the State recorded against him, shall be entitled to a

reduction from his sentence as follows ….” Section 33 of Pub. Act. No. 118 of 1893. This sentence reduction was known as “Good Time”. Id.[1]

8. In 1945, the State of Michigan enacted a statute with largely identical language providing for the availability of “Good Time” credit for County Jail inmates. See Section 2 of Pub. Act. 210 of 1945 (attached as Ex. 3).

9. That Act has been amended and currently provides as follows, in pertinent part:

> Sec. 1. The sheriff of any county may prescribe rules and regulations for the conduct of prisoners in his custody, **which rules and regulations shall be submitted to the circuit judge or judges in said county or circuit for approval, and upon the endorsement of such judge or judges the said rules and regulations shall be deemed to be effective as far as this act is concerned**: …
>
> Sec. 2. * * *
>
> (2) **Every prisoner whose record shows that there are no violations of the rules and regulations shall be entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence.** ….
>
> Sec. 3. … **it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release**, and **no sheriff shall be liable to respond to any prisoner or former prisoner in damages in any form of action, particularly false imprisonment, if any excess time up to the**

[1] The availability of “good time” credit for State prisoners (now MCL 791.33) was significantly curtailed and is now unavailable for prisoners as to their minimum sentence for crimes committed after December 15, 2000. See 1978 Initiative Proposal B [removed good time credit on minimum sentences]; Pub. Act No. 322 of 1986 [eliminated good time] for sentences after 1987; and Truth in Sentencing legislation, i.e. MCL 800.33; MCL 791.233.

maximum of the original sentence without good behavior allowance be served. [MCL 51.281-51.283 [emphasis added]].

10. Until July 14, 2022, there was no Michigan case law that addressed the issue of whether "Good Time" credit under MCL 51.282 also applied to criminal contempt sentences arising out of civil cases. There were two Attorney General opinions which concluded that good time credit was not available on civil contempt sentences. See 1929 Mich AG LEXIS 212 (no good time on a civil contempt sentence since "there would seem to be little question but that the good time law [under the penal code] was only intended to apply to cases were a definite minimum sentence was imposed by the court under the provisions of the indeterminate sentence law") (attached as Ex. 1) and 1947 Mich AG LEXIS 234 (attached as Ex. 2)(civil contempt not governed by the good time provisions of the penal code).

C. The Sheriff Department's Good Time Policy

11. Under Michigan law, the Sheriff is responsible for operation of the County Jail. MCL 801.1. Former Sheriff Timothy Donnellon was the elected St. Clair County Sheriff from January 1, 2009 through November 9, 2020. Sheriff Mat King replaced former Sheriff Donnellon and currently holds the position.

12. Defendant Tom Bliss was the former Jail Administrator for St. Clair County from December 13, 2010 through the date of his retirement on January 1, 2020. Tracy DeCaussin replaced Mr. Bliss and is the current Jail Administrator.

Prior to Defendant Bliss' service, the jail administrator was Tom Torrey (see Torrey Affidavit, ¶ 1; attached as Ex. 3).

13. Under Michigan law, all Jail policies are reviewed and approved by the Chief Judge of the Circuit Court of the County where the jail is located. See MCL 51.281. For a period of an unknown number of years prior to Sheriff Donnellon's election, the Jail maintained a judge-approved policy that stated "Goodtime is **NOT** given on sentences for Contempt or to inmates sentenced to serve weekends" (see Ex. 4 [emphasis in original]; ECF No. 13-1 and 13-2; PageID.1277-1280).

14. According to the memory of Mr. Torrey, the "no goodtime for contempt sentences" policy was implemented over a decade ago after a St. Clair County Judge contacted the jail and informed jail personnel that the Jail was not supposed to be providing good time credit to individuals sentenced on contempt charges (Ex. 3, ¶¶ 2-3) .

15. During the three-year time period prior to the filing of this lawsuit, many criminal contempt sentences expressly provided that the person sentenced is not eligible for good time credit -- four different St. Clair County Judges included a "no good time" provision as part of their sentencing orders in criminal contempt cases on at least one occasion (see examples attached as Ex. 5). Judge Tomlinson included such a provision on the vast majority (but not all) contempt sentencing orders, Judges West and Hulewicz did so on only rare occasions, and Judge Brown

included such a provision less than 1/3 of such orders (see examples attached as Ex. 5 ("no good time" included) and Ex. 6 (not-included).

16. The sentencing orders challenged in this lawsuit [Mar. 30, 2021, June 22, 2021 and July 29, 2021 (Plaintiff Lindke) and Aug.11, 2021 (Plaintiff Schultz) [ECF No. 13, PageId.1266, ¶¶22, 25] contained a "no good time" provision (see Exs. 7, 8, 9, and 10). A Sheriff does not have the power to ignore such an order; he is required by law to follow a contempt sentence issued by the Court, and if he fails to do so he is guilty of a misdemeanor. MCL 600.1845.

17. Effective January 11, 2022, well before this lawsuit was filed, the Jail eliminated its long policy of denying good time credit to inmates sentenced for criminal contempt (see Exs. 11 and 12).[2]

D. The Undisputed Facts as to Plaintiff Lindke's Sentences and Rule infractions

18. Plaintiff Kevin Lindke was incarcerated in the St. Clair County Jail between March 3, 2021 and February 24, 2022 as a result of multiple different charges, sentences, and judicially ordered holds (see Lindke dep., pp. 9-23; attached as Ex. 13), as follows:

a. He was arrested on March 3, 2021 based upon multiple outstanding warrants for his arrest:

i. On November 6, 2020 he was sentenced to 60 days in jail based upon a PPO violation in Case No. 18-

[2] This is a fact known to Plaintiffs and the reason Plaintiffs' "request for declaratory relief is retrospective only" (see ECF No. 13, PageID.1274, fn3).

001969-FH; he intentionally did not report to jail as ordered (see Sentence), publicly mocked the judge and posted pictures of himself dressed as "where's waldo", and a bench warrant was issued for his arrest (Ex. 14, p. 3);

ii. On November 19, 2020, a bench warrant was issued for his arrest when he failed to appear at a sentencing hearing scheduled for that date in Case No. 16-741-PP (Id);

iii. On December 10, 2020, a bench warrant was issued for his arrest when he failed to appear at an evidentiary hearing scheduled on an Order to Show Cause also in Case No. 16-741-PP (Id);

iv. On December 30, 2020, a warrant for his arrest was issued after he was charged with five felonies, including unlawful posting of message with aggravating circumstances in violation of MCL 750.411(S)(2)(B), using a computer to commit a crime in violation of MCL 752.7973(D), a 4 to 10 year felony, Aggravated Stalking in violation of MCL 750.411(I) as well as other lesser included crimes in Case No. 20-P-06222-FY (Ex. 15). Once he was arrested he was then also being held on a $25,000 cash surety bond set at his March 4, 2021 arraignment (Id).

v. On January 22, 2021, a bench warrant was issued on an Order to Show Cause issued by the Court on August 31, 2020 in Case No. 20-001291-PP (Ex. 16);

vi. As a result of his attempts to evade arrest after he was located by a St. Clair County Sheriff Department Deputy, he was also charged with resisting and obstructing; and once he was arrested was held on a $10,000 cash surety bond in Case No. 21-M-00496-FY set at his March 4, 2021 arraignment (Ex. 17).

b. On March 4, 2021, he was ordered to serve the 60 day sentence from the November 6, 2020 sentencing order that he failed to report as directed in Case No. 18-001969-FH (Ex. 14, p. 3);

   i. His scheduled "outdate" was May 1, 2021;

   ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Plaintiff was eligible for and earned good time, his outdate on that sentence would have been April 22, 2021;

   iii. Even if Lindke was eligible to be released on this sentence on April 22, 2021, he was not eligible to be released because he was being held on bond in two separate felony cases (see subparagraph a(ii) and a(iii) above) and he was also serving another concurrent sentence (see subparagraph c, below).

   iv. Even though Lindke intentionally refused to report to jail as ordered on November 6, 2020, mocked the court system and became a fugitive, he received no extra sentence for such actions since such a sentence would run concurrently (Lindke dep., pp. 12-13).

c. On March 30, 2021, Lindke was sentenced to 90 days in jail for criminal contempt for violating a PPO in Case No. 16-000741-PP (Ex. 7).

   i. His scheduled outdate was June 27, 2021;

   ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Lindke was eligible for and earned good time, his outdate on that sentence would have been June 12, 2021;

   iii. Even if Lindke was eligible to be released on this sentence on June 12, 2021, he was not eligible to be released because he was being held on bond in two separate felony cases (see subparagraph a(ii) and a(iii) above).

d. On June 22, 2021, Lindke was sentenced to 93 days in jail for criminal contempt for another violation of a PPO in Case No. 16-000741-PP (Ex. 8).

   i. His scheduled outdate was September 22, 2021;

   ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Lindke was eligible for and earned good time, his outdate on that sentence would have been September 6, 2021;

   iii. Even if Lindke was eligible to be released on this sentence on September 6, 2021, he was not eligible to be released because he was being held on bond in two separate felony cases (see subparagraph a(ii) and a(iii) above) and he was also serving another concurrent sentence (see subparagraph e, below).

e. On July 29, 2021, Lindke was sentenced to 93 days in jail for criminal contempt for another violation a PPO in Case No. 20-001291-PP (Ex. 9).

   i. His scheduled outdate was October 29, 2021;

   ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Lindke was eligible for and earned good time, his outdate on that sentence would have been October 13, 2021;

   iii. Even if Lindke was eligible to be released on this sentence on October 13, 2021, he was not eligible to be released because he was being held on bond in two separate felony cases (see subparagraph a(ii) and a(iii) above) and he was also serving another concurrent sentence (see subparagraph f, below).

f. On September 15, 2021, Lindke was sentenced to 30 days in jail for criminal contempt for "improper behavior in court" in Case No. 20-001291-PP (Ex. 18) at the time of the above sentence.

i. His scheduled outdate was October 14, 2021;

ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Plaintiff was eligible for and earned good time, his outdate on that sentence would have been October 9, 2021;

iii. Even if Lindke was eligible to be released on this sentence on October 9, 2021, he was not eligible to be released because he was being held on bond in two separate felony cases (see subparagraph a(ii) and a(iii) above) and he was also serving another concurrent sentence (see subparagraph e, above).

iv. The Judge initially entered an order that this sentence would be consecutive, but because of Michigan statutory law did not authorize a consecutive sentence for contempt, he changed it to concurrent, so there was effectively zero penalty for the criminal contempt that occurred (Lindke dep., pp. 15-16).

g. On October 15, 2021, Lindke was sentenced to 93 days in jail for criminal contempt for another violation a PPO in Case No. 20-001291-PP (Ex. 19).

i. His scheduled outdate was January 15, 2022;

ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Lindke was eligible for and earned good time, his outdate on that sentence would have been December 30, 2021;

iii. Even if Lindke was eligible to be released on this sentence on December 30, 2021, he was not eligible to be released because his bond on another pending PPO sentence was revoked on December 16, 2021 after he was found guilty on another PPO violation in the same case (Ex. 16; see also Ex. 20).

h. On November 29, 2021, as a result of an October 4, 2021 plea deal in the above two felony cases (see paragraph a(ii) and (iii)), Lindke was sentenced to time served [272 days]) (Ex. 21).

i. On January 4, 2022, Lindke was sentenced to 93 days in jail for criminal contempt for another PPO violation in Case No. 20-001291-PP (Ex. 22).

   i. His scheduled outdate was April 6, 2022;

   ii. The sentencing order stated he was not eligible for good time ("no good time"), but if Lindke was eligible for and earned good time, his outdate on that sentence would have been March 21, 2022;

   iii. For reasons set forth in more detail below, Lindke was released on February 24, 2022 after the Michigan Court of Appeals granted his motion for bond pending appeal, before his out date with or without good time credit.

19. During the time that Lindke was incarcerated, he was found guilty of violating jail rules on five separate occasions:

a. On June 2, 2021, Lindke was given a rule infraction for his second offense of having an unauthorized mat in his possession (Ex. 23);

b. On June 15, 2021, Lindke was given a rule infraction for disrespect towards staff and refusing a direct order (Ex. 24);

c. On October 7, 2021, Lindke was given a rule infraction for engaging in a physical altercation with another inmate [the incident was captured on video and shows that Plaintiff was the aggressor, when he "sucker punched" the other inmate while the inmate was carrying jail items to his cell (Ex. 25; Lindke dep., p. 28);

d. On January 12, 2022, Lindke was given a rule infraction for having his mother deposit money into another inmate's account (Ex. 26);

e. On February 23, 2022, Lindke was given a rule infraction for engaging in a physical altercation with another inmate while outside of his assigned area [the incident was captured on video and shows that the other inmate was the aggressor] (Ex. 27; Lindke dep., p.29).

f. In each of the above cases, Lindke was afforded the opportunity for a full hearing but waived such a hearing, and was adjudicated as having violated a jail rule, and he did not appeal any of the rulings (Lindke dep., pp. 23-34).

E. <u>The Undisputed Facts as to Plaintiff Schultz Sentence</u>

20. Plaintiff Schultz was incarcerated in the St. Clair County Jail between August 11, 2021 and September 4, 2021 (Sentencing order attached as Ex. 10; Schultz dep., p. 16; attached as Ex. 28). The sentence he received was a 25-day sentence for "direct contempt of court" for his behavior during a guardianship proceeding (Id). His sentencing order specifically stated "No good time", and the sentencing Judge also specifically stated in open Court that Mr. Schultz would not be eligible for good time as part of his punishment (Schultz dep., pp. 11,18).

F. <u>Plaintiff Lindke Rasied the Good Time Issue</u>

21. A record of Lindke's electronic communications while at the jail shows that he raised the good time credit issue with jail personnel on multiple occasions beginning first on September 27, 2021 and then again multiple times thereafter (Ex. 29; Lindke dep, pp. 36-37).

22. Schultz's electronic communications show that he never raised the issue (Schultz dep., p. 17). Because he thought he was not entitled to "good time" because of the judge's oral statement at his sentencing, he cannot recall ever raising the issue with any jail correctional officers (Id at pp. 17-18).

23. As indicated above, a Sheriff is required by law to follow a sentence order on a contempt of court sentence, and if he fails to do so he is guilty of a misdemeanor. MCL 600.1845. As a result, when Lindke raised the issue he was immediately told by jail personnel: "it is ordered by the court that you receive no credit and no good time on contempt and violation of the Personal Protection Order". "The Sheriff is required to follow the orders of the Court. If you believe that the Judge ['s] order is erroneous, you must raise that with the Court" (Id).

24. On October 4, 2021, Jail Administrator Tracy DeCaussin sent an email to St. Clair County Circuit Court Chief Judge Michael West asking clarification as to the issue of no good time on criminal contempt sentences. Judge West's response stated, in part: "A policy of no good time credit on a contempt charge (violation of a court order) makes sense to me because it is a disciplinary action by the court. Contemptuous behavior should not be rewarded" (Ex. 30).

25. On October 6, 2021, Lindke filed an emergency motion to correct invalid sentences in Case No. 2020-1291-PP before Judge Tomlinson. In the motion, Lindke requested that the Court "…remove the provision that Mr. Lindke not be allowed to earn good time credit, and order the Sheriff to immediately

calculate and apply all the credit to which Mr. Lindke is entitled to his several sentences…" (Ex. 14, p. 1).

26. On December 14, 2021, Judge Tomlinson issued his ruling on Lindke's emergency motion denying the motion, stating "The court's sentences were not improper . . . . Finally, Respondent's requested relief is impractical, given his incarceration on other matters . . . ." In the ruling, the Court refused to change the sentence order, but stated:

> The St. Clair County Sheriff has a long-standing policy, which has been implemented with the consent of various chief judges of the 31st Circuit Court, that prisoners serving sentences for contempt of court are not entitled to earn good time under MCL 51.281 et. seq. This court's inclusion of its statement "no good time" on the various judgments of sentence is in recognition of that long-standing policy. It serves to notify the county sheriff of the fact that the sentence is being imposed for contempt, which permits the county sheriff to implement the statutory scheme consistently with the rules and regulations which the county sheriffs have developed and administered for years.
>
> There is nothing improper about the court's sentence. Under MCL 600.2950(23), a respondent who fails to comply with a personal protection order "is subject to the criminal contempt powers of the court and, if found guilty, must be imprisoned for not more than 93 days." See also MCR 3.708(H)(5)(a). Respondent was found guilty of numerous violations of the personal protection orders. Each guilty finding subjected Respondent to the criminal contempt powers of the court and resulted in sentences of not more than 93 days, as permitted by statute.
>
> Finally, Respondent seeks relief from the wrong source. The court, in this matter, has no ability to order the county sheriff to grant Respondent a certain amount of good time or to even grant him good time. Under the statutory scheme, the county sheriff is given the sole responsibility of administering the program. Respondent's recourse is to pursue a remedy with the county sheriff, not the court (Ex. 14).

27. On December 15, 2021, Lindke raised the order with jail administrators and stated he was calling the matter to the attention of the sheriff as required under MCL 51.283 and stated, "I am currently owed 50-55 days of good time" (Ex. 31). Plaintiff was told that "Jail administration is in the process of reviewing goodtime" (Ex. 32).

28. After reviewing Lindke's request and the Court's December 14, 2021 opinion, on January 11, 2022, Sheriff King decided to change his policy and eliminated the policy prohibiting good time credit on contempt sentences, and the policy was approved by the Chief Judge (see Ex. 11).

29. After the policy change, on January 21, 2022, Lindke filed a grievance on the denial of good time and because the sentencing order had not been changed, he was told "we must follow written commitment orders signed by a judge. If you feel something in your order is not allowed you need to take that complaint to the court directly" (Ex. 33). The orders were not changed until well after Lindke was released from custody (Lindke dep. pp. 53-54).

30. During the time period of the above criminal contempt sentencing orders, Lindke filed multiple appeals to the Michigan Court of Appeals (see Michigan Court of Appeals Docket Nos. 357120, 358858, 358859, 359153, 358270, 361898(cot 14, and 362062). None of the petitioners in the PPO cases participated

in the appeals. In the appeals, he challenged his convictions, the denial of good time credit, and claimed that the separate sentences were de facto consecutive sentences.

31. On February 11, 2022, Lindke filed a motion in the Michigan Court of Appeals requesting that he be released on bond pending appeal (see Ex. 34). On February 24, 2022, the Michigan Court of Appeals granted Lindke's motion to post bond pending appeal directing that Lindke be released from St. Clair County Jail upon the posting of a $10,000 personal-recognizance bond. Lindke was released from St. Clair County jail on the same date (Ex. 35).

32. At the time Lindke was released on February 24, 2022, Plaintiff still had 41 days left to serve on his January 4, 2022 sentence. If Lindke was eligible for good-time credit on the final sentence, he would only have 25 days left to serve. However, by statute, to be entitled to good time credit under MCL 51.282, Plaintiff had to be without any rule infractions and, as set forth above, he was found guilty of violating two rules on separate occasions while serving the January 4, 2022 sentence (Exs.26-27).

33. On July 14, 2022, the Court of Appeals issued an Opinion and Order on all of the cases except the appeals relating to the sentencing orders dated October 15, 2021 (COA Case No. 361898) and January 4, 2022 (COA Case No. 362062). In the ruling, the Court of Appeals affirmed all of Lindke's convictions and found that the "claim involving good-time credit is likewise moot". *ARM v. KJL*, 342 Mich. App. 283 (2022). The Court of Appeals, however, stated "we choose to address [the

good-time credit issue] because it has public significance and would likely evade appellate review in future cases. . . . we agree that the local sheriff's policy of categorically prohibiting certain offenders from earning good-time credit – i.e., those incarcerated for contempt of court – runs directly contrary to the statute enacted for our Legislature". 342 Mich. App. at 287. The Court of Appeals opined:

> The trial court grounded its holding on the local sheriff's "long-standing policy." But a local sheriff's policy cannot trump the Legislature's duly enacted statute, regardless of any consent by the circuit court's chief judges. By ordering in advance that KJL was categorically prohibited from earning good-time credit, the trial court violated MCL 51.282(2). *Id* at 302-303.

In the Opinion, the Court of Appeals noted that neither the petitioner in the underlying case nor the prosecutor participated in the case. *Id* at 293. No one brought to the panel's attention the Michigan Supreme Court authority that provided that a Judge has inherent power to issue contempt sentences that "cannot be limited or taken away by act of the legislature", and that authority was never discussed in the ruling. See *In re Huff*, 352 Mich. at 415-16; *Mick*, 494 Mich. at 394-95 and nn.63-64 (2013).

ARGUMENT

I. THE GOOD TIME STATUTE DOES NOT APPLY TO CRIMINAL CONTEMPT SENTENCES

The premise of Plaintiffs' lawsuit is that MCL 51.282(2), and its use of the word "sentence applies to contempt sentences in civil cases. In short, a contempt sentence is a different animal from that of a criminal sentence. See *In re Debs*, 158

U.S. 564, 596 (1895)("[A] court enforcing obedience to its orders by proceedings for contempt is not executing the criminal laws of the land, but only securing to suitors the rights which it had adjudged them entitled to"). A criminal sentence, on the other hand, is something that falls within the power of the legislature. See *People v. Cummings,* 88 Mich. 249 (1891)("It is in the power of the Legislature to fix all punishment for crime", and to provide for a minimum and maximum punishment, and to give the courts in which the prisoners are convicted discretion to fix a term between these limits"); *People v. Snider*, 239 Mich. App. 393, 427 (2000)("the Legislature was recognized as having the power to provide for determinate sentences as punishment for crime before the inclusion of a provision in a prior state constitutional allowing the legislature to provide for indeterminate sentencing"). Thus, the use of the word "sentence" in MCL 51.282(2) is properly read as applying to a criminal sentence that falls within the jurisdiction of the legislature, and not a contempt sentence that falls within the jurisdiction of the judiciary.

Although this issue was decided in Plaintiff Lindke's favor in *ARM v. KJL*, 342 Mich. App. 283 (2022) the ruling was issued without the participation of the Sheriff or any other opponent and is contrary to prior Michigan Supreme Court authority which treated criminal contempt arising from a civil case as something falling within the inherent powers of the judiciary, and not something controlled by the legislature. See *In re Huff*, 352 Mich. 402, 415-16 (1958)(the power to punish for contempt is an inherent power of the judicial branch and "cannot be limited or

taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it"). The ruling failed to recognize this key distinction and the underpinning of the decision was a faulty premise – a premise that the legislature had the power to control/limit the sentence a judge could issue in a contempt sentence arising out of a civil case.

The ruling was also contrary to how four other states have ruled on this exact same issue – where they have found that good time statutes do not apply to criminal contempt sentences for the same reason applicable here – contempt is not a "sentence" or a crime set forth in the criminal code and the Court's power to punish for contempt is an inherent power reserved to the judiciary and cannot be abridged by the legislative branch. See, *State v. Clark*, No. 105,965, 2012 Kan. App. Unpub. LEXIS 331, at **10-11 (Kan. Ct. App. May 4, 2012)(Kansas Court of Appeals holding that "contempt is not a crime defined and set forth in our criminal code", affirming a contempt sentence that included a no good time credit provision); *Neely v. State*, 615 S.W.3rd 392 (Ark. Ct. App. 2020)(Arkansas Court of Appeals affirming a contempt sentence that provided no good time credit permitted because "summary punishment for contempt committed in the presence of the court is an inherent power reserved to the judiciary and cannot be abridged by legislation"); *Jones v. State*, 847 N.E.2d 190, 201 (Ind. Ct. App. 2006)(Indiana Court of Appeals finding that criminal contempt is not a crime contemplated under the good time statute, and sentence without the possibility of good time "was to vindicate the authority of the trial court

and not to punish for the commission of a criminal act, as defined by the Indiana Legislature and codified in the criminal code"); *In re Crumpacker*, 431 N.E.2d 91, 98 (1982)(Indiana Supreme Court upholding sentence for criminal contempt with no good time credit); *State v. Wood*, 91 S.W.3d 769, 776 (2002) (Tennessee Court of Appeals finding that good time statute that applied to "[e]ach such prisoner who has been sentenced to the county jail" did not apply do defendant convicted of criminal contempt arising out of a civil matter); see also *In re Wilkes*, 2002 S.C. LEXIS 244, at *1 (S.C. Nov. 25, 2002)(Supreme Court of South Carolina holding that good time "shall not apply to sentences imposed by this Court for violation of its orders").

At the motion to dismiss stage, Defendants raised this same argument, and this Court denied the motion without prejudice and indicated that it would reconsider or revisit the issue at the summary judgment stage (ECF No. 36, PageID.1931). At that time, the Court indicated that "it would be helpful to maybe draw back a little bit and understand better the principles, broadly, that the Michigan Supreme Court is talking about, when it comes to separation of powers with respect to criminal contempt sentencing …." (Id at PageID.1934).

A review of the broad principles behind the Michigan Supreme Court's statement in *In re Huff* that contempt is an inherent power of the judicial branch and "cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it" shows that it is a longstanding, well principled legal concept that has literally existed for centuries.

See *In re Huff*, 352 Mich. at 415-16 (these inherent powers include the power to "adjudge and punish for contempt").

The right of the judicial branch to punish contempt – for misbehavior in the presence of the Judge, or for failing to comply with a Judicial order or decree -- existed at common law before the formation of the United States and "contempt sentences were not subject to any statutory limit". *Green v. United States*, 356 U.S. 165, 180 n.11 (1958);[3] see also *In re Williams*, 306 F. Supp. 617, 619 (D.D.C. 1969) (A court has "inherent authority" to punish for contempt "has been recognized in this country since early Colonial times"); *Nichols v Judge of Superior Court*, 130 Mich. 187, 196 (1902)("The power to punish for contempts is as ancient as the courts, and antedates *Magna Carta*.").

The right has always been considered an inherent right of the judicial branch because without such a right, a judge would have no ability to control their court room and no ability to enforce its orders or rulings. As the United States Supreme Court explained over a century ago:

> … the power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgments and decrees would be only advisory.

Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 450 (1911).

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[3] To the present day, federal judges are not subject to any statutory limit on the length of any criminal contempt sentence in these types of circumstance. See 18 U.S.C. Sect. 402.

Significantly, Courts have specifically recognized that the right to punish for contempt has to come from inherent judicial power, and not be dependent or restricted by the legislative branch, otherwise the judicial branch is not a co-equal branch of government, but one fully dependent upon another branch for its powers. This was explained by the United States Supreme Court:

> The ability to punish disobedience to judicial orders is regarded as essential to ensuring that the Judiciary has a means to vindicate its own authority without complete dependence on other Branches. "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls 'the judicial power of the United States' would be a mere mockery." *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450 (1911). As a result, "there could be no more important duty than to render such a decree as would serve to vindicate the jurisdiction and authority of courts to enforce orders and to punish acts of disobedience." *Ibid.* Courts cannot be at the mercy of another Branch in deciding whether such proceedings should be initiated.

Young v. United States ex rel. Vuitton Et Fils S.A., 481 U.S. 787, 796 (1987).

The Michigan Supreme Court has likewise followed these same legal principles for a century or more. See *People ex rel. Attorney General v. Hoschuh*, 235 Mich. 272, 275 (1926) ("The inherent powers of the court of equity are safeguarded by the Constitution and are not subject to be brushed aside or rendered supine by legislative mandate. As an equal and co-ordinate branch of the government the judicial power must be permitted to function within its allotted sphere free from mandate of the legislative and executive powers, else be shorn at the will of mere equals").

The Michigan Supreme Court has gone even further and found that it is both an inherent right and one protected by Article VI, Section 1 of the Michigan Constitution (see *Mick*, 494 Mich. at 394-95 and nn.63-64), and that right is not subject to restrictions by the Michigan Legislature:

> There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute [citations omitted], which is merely declaratory and in affirmation thereof, to adjudge and punish for contempt, and determination of the issue is not for a jury but the court [citations omitted]. Such inherent power extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court. [citations omitted]. **Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it**. [citations omitted].

In re Huff, 352 Mich. at 415-16[emphasis added]); *see also In re Contempt of Dougherty*, 429 Mich. 81, 91 n.14 (1987) ("Michigan courts have, as an inherent power, the power at common law to punish all contempts of court. This contempt power inheres in the judicial power vested in this Court, the Court of Appeals, and the circuit and probate courts by Const 1963, art 6, § 1 [citation omitted]).

It is true that the Michigan legislature can pass laws regarding contempt that are *merely* declaratory or in affirmation of the Court's inherent contempt powers, but they cannot restrict the judiciary powers when it comes to sentences. See *In re Scott*, 342 Mich. 614, 618 (1955) (citing *Langdon v. Judges of the Wayne Circuit Court*, 76 Mich. 358 (1889))("It should be here noted that statutes of the type enacted

in Michigan are merely declaratory, and in affirmation, of the inherent common-law right of courts of record to determine contempt"); *In re Huff*, 352 Mich. at 415 (emphasis added) (same); *Mick*, 494 Mich. at 394 n.63. The legislature can also prescribe certain punishments outside of the inherent powers of the Court and the judicial branch cannot create its own additional punishments beyond those inherent powers. See *id.* at 395 and n.65 ("This inherent judicial power to punish contempt, which is essential to the administration of the law, does not include the power to mete out certain punishments [order indemnification by a governmental entity] for contemptuous acts beyond those contempt powers inherent in the judiciary"). However, when it comes to its inherent contempt powers, such powers "cannot be limited or taken away by act of the legislature". *Huff*, 352 Mich. at 416; see also *Mick*, 494 Mich. at 394 ("Our holding, however, should not be interpreted as constraining courts' inherent contempt powers"). Thus, it is up to the judicial branch to determine whether to accept the limitations on its powers passed by the legislature when dealing with those inherent powers. See e.g., *People v Joseph*, 384 Mich. 24, 35 (1970)(rejecting the argument that the legislature had the power to determine what court had jurisdiction to try an individual for contempt; "In fact, the [United Supreme Court ruling in *In re Murchison*, 349 U.S. 133 (1955)] expressly recognized that only Michigan courts have the power to declare whether or not the Michigan legislature can restrict or regulate their contempt powers").

Here, the *ARM v. KLM* did not consider this key issue and improperly relied upon legal principles and precedent applicable to criminal sentences – not contempt sentences. See 342 Mich. App. At 302. Its ruling thus ran directly counter to Michigan Supreme Court precedent that contempt sentences are the province of the judicial branch, not the legislative branch. If the legislature has the ability to limit contempt sentences, such as that advocated by the Plaintiffs here – by telling a judge he can only issue a maximum 93 day sentence, and he must allow an inmate to be eligible for good time credit on such a sentence (thereby potentially reducing the sentence to a 77 day sentence), and a judge cannot issue any such sentences consecutively because it has not been expressly permitted by the legislature (see Ex. 35, p. 6)[4], it greatly restricts a judge's ability to enforce its orders and control a courtroom, and makes the judicial branch subordinate to the legislative branch. Discovery has revealed this very thing to have occurred with respect to Plaintiff Lindke on two of the sentences he received in this case. When he absconded on the November 6, 2020 order to report to jail and mocked the court, and when he committed contempt in the presence of the court at his July 29, 2021 sentencing hearing, due to legislative restraints the court believed it was subject, these contemptuous actions received no punishment whatsoever – thereby unconstitutionally allowing the legislature to render the judicial branches' inherent

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[4] Consecutive sentences are only permitted when specifically authorized by statute, *People v. Parker*, 319 Mich App 410, 415 (2017).

contempt powers to be eviscerated in these two circumstances. It is these very circumstances that previously led the Michigan Supreme Court to expressly rule that its contempt powers are "inherent and a part of the judicial power of constitutional courts, [and] cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it". *In re Huff* at 415-416.

Thus, because a contempt sentence falls within the inherent (and constitutional) powers of the judiciary, and criminal sentences fall within the enumerated rights of the legislature, a proper interpretation of MCL 51.282 is the reference to "sentence" should be read as referring to a criminal sentence, and not a contempt sentence[5] and ARM v. KJL is contrary to binding Michigan Supreme Court precedent that was never provided to the Court of Appeals prior to its ruling. This is the very basis upon which other states have ruled that their virtually identical good time statutes do not apply to contempt sentences. Here, MCL 51.282, which

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[5] Courts have long recognized that "criminal contempt", in this case arising from a civil proceeding, are "quasi-criminal" or "criminal in nature" but are not the same as a crime. See e.g., *In re Contempt of Dougherty*, 429 Mich. at 90; *Lovvorn v. Lovvorn*, 2008 Tenn. App. LEXIS 341 (Tenn. Ct. App. Apr. 24, 2008); *People v. Joseph*, 384 Mich. at 35 ("While contempt, like other crimes is an affront to society as a whole, it is more directly an affront to the justice, authority and dignity of the particular court involved"). Criminal contempt is a "*sui generis*" offense, it is not a felony or a misdemeanor, and contempt proceedings are not a prosecution for offenses within the ordinary meaning of that term and not a "crime" that invokes directly the guarantees found in the Bill of Rights. See *Bowles v. United States*, 50 F.2d 848 (4th Cir. 1931); *United States v. Eichhorst*, 544 F.2d 1383 (7th Cir. 1976).

was passed by the legislature and copied legislation from the provisions of the Prison Code was intended to and should logically be read to apply to sentences within the jurisdiction of the legislature, not those within the jurisdiction of the judicial branch, i.e., criminal contempt sentences arising out of civil cases.

II. EVEN IF MCL 51.282 APPLIES TO CONTEMPT SENTENCES, PLAINTIFFS' CLAIMS FAIL FOR OTHER REASONS

A. DEFENDANTS ARE ENTITLED TO QUASI-JUDICIAL IMMUNITY BECAUSE THE SENTENCING ORDERS EXPRESSLY PROVIDED THAT PLAINTIFFS WERE NOT ENTITLED TO GOOD TIME CREDIT

At all times raised in the Amended Complaint, Plaintiffs were held in the St. Clair County Jail pursuant to judicial sentencing orders that specifically prohibited each of them from receiving good time credit.

Under the Michigan RJA, a Sheriff is required to follow the contempt orders of the Court issued in civil cases. See MCL 600.1845(1)(individuals committed to jail for contempt in contempt sentences "shall be actually confined and detained within the jail until they are discharged from the jail by due course of law . . . ."). The statute also provides that the Sheriff is guilty of a crime if he does not follow that contempt order and the "prisoner" fails to obtain a writ of habeas corpus:

> (2) If any sheriff or keeper of a jail permits or suffers any prisoner so committed to jail to go or be at large out of his prison, except by virtue of writ of habeas corpus or order of court or as otherwise provided by the law, he is liable for the damages sustained to the party aggrieved. And he is also guilty of a misdemeanor.

MCL 600.1845(2); see also *United States v. Hoffman*, 13 F.2d 269 (N.D. Ill. 1925)(sheriff (30 days) and jail superintendent (four months) sentenced to jail for a common law misdemeanor for allowing individuals who had been sentenced to one year in jail for criminal contempt to leave jail 82 days early); *Biskind v. United States*, 281 F. 47, 50 (6th Cir. 1922)("Willful and intentional disobedience of the order of a court of competent jurisdiction (even though made in a civil cause) is criminally punishable, so far as the proceeding is in vindication of the authority of the court"). Obviously, this statute is a recognition that the Sheriff, in his role as jailer, is an essential part of the judicial process, for without his adherence to the contempt orders of the court, the Judge's ability to enforce its orders would be destroyed.

Because Defendants followed the orders of the Court, they are entitled to quasi-judicial immunity. See *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994). As the Sixth Circuit recognized, "[i]t is well established that judges are entitled to absolute judicial immunity from suits for money damages for all actions taken in the judge's judicial capacity, unless these actions are taken in the complete absence of any jurisdiction." *Id.* at 847 (citing *Mireles v. Waco*, 502 U.S. 9, 11 (1991)). This absolute judicial immunity extends "to non-judicial officers who perform 'quasi-judicial' duties". *Id.* When a Sheriff and his jail administrator jails someone the court orders him to incarcerate, and the order directs that the person is not to be provided good time credit, the execution of that "court order is intrinsically

associated with a judicial proceeding". *Id.*; see also *Patterson v. Von Riesen*, 999 F.2d 1235, 1240 (8th Cir. 1993)(warden absolutely immune for confinement pursuant to a facially valid court order); see also *Cooper v Parrish,* 203 F.3d 937, 948 (6th Cir. 2007)("An official is entitled to absolute quasi-judicial immunity when that official acts pursuant to a valid court order because the act of enforcing or executing a court order is intrinsically associated with a judicial proceeding").

Plaintiffs may claim that the trial court stated that the orders were the result of the Sheriff's own "long standing" policy, however, at all times the orders remained as written, even after the Sheriff removed the policy in question, and the Court included the provision in some orders, but not others (see Exs. 5 and 6). Thus, Plaintiffs were always incarcerated pursuant to the Judge's orders, which a Sheriff and his administrators are required to follow irrespective of the reasons behind the order. Although the Court has raised whether this creates a "latent ambiguity" in the order, even, the Michigan Court of Appeals interpreted these specific orders the same as the Sheriff's office did – they were sentences "without the ability to earn good-time credit". *ARM v. KJL (In re KJL)*, 2023 Mich. App. LEXIS 5358, *4-5.

Moreover, there is no legal support for applicability of this principle when it comes to orders of the Court, and since the orders were facially valid, the Sheriff was required to follow the letter of those orders and not interpret some hidden meaning or decide that the Judge was wrong in some way. See also *Turney v. O'Toole,* 898 F.2d 1470, 1473 (10th Cir. 1990) ("Even assuming that the order was

infirm as a matter of state law, it was facially valid. 'Facially valid' does not mean 'lawful.' An erroneous order can be valid." (citing *Baker v. McCollan*, 443 U.S. 137, 143-44 (1979)). Irrespective of the claimed reason the language was included in the order, the Sheriff does not get to second guess a judge and is required to follow the directions in the order, irrespective of whether the Sheriff thinks the judge has applied the law correctly or not. MCL 600.1845(1); All persons are required to follow judicial orders, even if they were unlawful. *United States v. United Mine Workers of America*, 330 U.S. 258, 293 (1947) (finding that, even without regard to its unconstitutionality, "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings"; *Gompers v. Bucks Stove & Range Co.,* 221 U.S. 418, 450 (1911) ("If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery"); see also *Price v. Montgomery Cnty.*, 72 F.4th 711, 734 (6th Cir. 2023)("an obligation to carry out a clear court order involves no exercise of discretion" [citations omitted]).

Because the judicial sentencing orders specifically barred Plaintiffs from receiving good time credit, the claims against Defendants are barred by absolute quasi-judicial immunity.

B. **PLAINTIFF SCHULTZ' CLAIM IS BARRED BY *HECK V. HUMPHREY***

Although Plaintiff Lindke arguably secured the reversal of the "no good time" provision in his sentencing order on appeal, Plaintiff Schultz never challenged his sentencing order and thus his sentencing order was never reversed.

In *Heck v. Humphrey*, the Supreme Court held that "in order to recover damages for [an] allegedly unconstitutional conviction or imprisonment . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." 512 U.S. 477, 486-87 (1994). Following *Heck*, the Supreme Court held that a "claim for declaratory relief and money damages, based on allegations of deceit and bias on the part of the decisionmaker that necessarily imply the invalidity of the punishment imposed [i.e., revocation of good-time credits], is not cognizable under § 1983." *Edwards v. Balisok*, 520 U.S. 641, 648 (1997). The rule resulting from *Heck* and *Balisok* is often referred to as the "favorable termination" requirement of *Heck*. *Williams v. Wilkinson*, 51 F. App'x 553, 557 (6th Cir. 2002); *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (the rule following all of these cases is that "a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal

prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration."). Even a prisoner who has been released from confinement must satisfy the *Heck* requirements when a finding in his favor would imply the invalidity of the duration of his confinement. *See Randell v. Johnson*, 227 F.3d 300 (5th Cir. 2000).

Here, Plaintiff Schultz seeks relief that necessarily would invalidate his underlying contempt sentence which expressly stated he was not entitled to good time credit while service his 25 day sentence. Thus, his claim is barred by *Heck*.

C. PLAINTIFFS' CLAIMS ARE BARRED BECAUSE THEY FAILED TO MEET THE PROCEDURAL PRE-REQUISITES OF THE ACT

The United States Supreme Court held in *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) that there is no Constitutional right to good-time credit, but where a state creates a right to good-time credit, a prisoner's interest is "sufficiently embraced" within the Fourteenth Amendment protections. However, such a right is also subject to the limitations set forth in the state created right. See *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)(a state law that grants a property interest defines the boundaries and rules or understandings of that property interest, including claims of entitlement to those benefits).

Thus, the entitlement to any alleged right to good time credit under MCL 51.282 is necessarily limited by the rules related to such right as set forth in the

statutory provisions. See MCL 51.282-51.283. Here, Plaintiffs fail to meet these requirements in multiple respects.

1. <u>The Failure to Request to be Released</u>

To be eligible for good time credit under MCL 51.282, the Act requires that the inmates, in this case, the Plaintiffs, ask to be released based upon good time credit once they are eligible for such release. See MCL 51.283 ("it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release").

Here, Plaintiff Schultz cannot establish that he did so. Plaintiff Lindke did so, but only did so first on September 27, 2021. The Sentencing orders challenged in the lawsuit by Lindke are only the sentencing orders dated March 30, 2021, June 22, 2021, and July 29, 2021 (see ¶22, ECF No. 13, PageID.1266). Since the March 30, 2021 and June 22, 2021 sentencing orders were already served as of that date, Lindke had no entitlement to good time credit under the statute for either of those two sentences.

Thus, the claim for entitlement to good time credit by Schulz and the claim by Lindke as to the March 30, 2021 and June 22, 2021 sentencing orders must be dismissed.

2. <u>Plaintiff Lindke Did Not Have a Constitutional Right to Good Time Credit because he had several adjudicated rule violations during his Jail Stay</u>

The premise of every claim of Plaintiff Lindke's lawsuit is that he had a Constitutional right to Good Time Credit because such a right was created by MCL 51.282. However, the United States Supreme Court has specifically held that to have an interest protectable under the constitution, a plaintiff "must . . . have a legitimate claim of entitlement to it", and a benefit or interest is not constitutionally protected if under the "existing rules . . . that stem from . . . state law", "government officials may grant or deny it in their discretion." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005); see also *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-65 (1989); *Olim v. Wakinekona*, 461 U.S. 238, 249-51 (1983).

The Michigan Good Time Statute provides that only inmates "whose record shows that there are no violations of the rules and regulations shall be entitled to [good time credit]". MCL 51.282(2). As set forth above, Lindke was found guilty of violating "jail rules and regulations" on five separate occasions, and he has not had any of the five set aside. Significantly, he committed a major rule violation on October 7, 2021, while serving the July 29, 2021 sentence, and before he would have otherwise have been eligible for good time credit (October 13, 2021).[6]

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[6] In his jail grievances, Lindke appears to have calculated his "good time" eligibility by measuring the entire time period of his incarceration. If that were the proper way to calculate his good time credit, then his five rule violations would all have occurred during the "sentence", and, thus, any good time credit available during

Thus, because of these rule violations, under the statute, he had no entitlement to good time credit, and at most, whether he was given good time credit would be entirely discretionary with the Sheriff. Under these circumstances, he had no constitutionally protectable liberty interest because he did not have an "entitlement" to good time credit under MCL 51.282 regardless of the judicial sentencing orders.

3. **Because of several overlapping sentences being served concurrently, there was never a time when Plaintiff Lindke was eligible for release even if he had been provided good time credit**

As Judge Tomlinson recognized in December 14, 2021 ruling (Ex. 14) "Respondent's requested relief [a release from custody], under the circumstances presented in this matter, is impractical. …" because he was being held on other sentences and holds. In fact, there never was a time where even if Plaintiff Lindke had earned good time credit that he was not already being held on other charges or serving other concurrent sentences which rendered him ineligible for release.

As set forth above, Lindke's criminal contempt sentences and "outdates", had he been eligible for and earned good time credit, were as follows:

1. For the March 4, 2021(based upon the November 6, 2020 sentence) sixty (60) day sentence, Plaintiff's outdate with good time credit would have been April 22, 2021[7].

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the entire period of his incarceration was discretionary and not an entitlement under the statute. Defendants believe the proper way to calculate good time credit is sentence by sentence.

[7] Under the statute, a prisoner with no rule violations is "entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence". The St. Clair County Jail calculates a good time out date by dividing the length of the sentence by

2. For the March 30, 2021 ninety (90) day sentence, Plaintiff's outdate with good time credits would have been June 12, 2021.

3. For the June 22, 2021 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been September 6, 2021.

4. For the July 29, 2021 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been October 13, 2021.

5. For the September 15, 2021 thirty (30) day sentence, Plaintiff's outdate with good time credits would have been October 9, 2021.

6. For the October 15, 2021, ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been December 30, 2021.

7. For the January 4, 2022 ninety-three (93) day sentence, Plaintiff's outdate with good time credits would have been March 21, 2022.

Based only upon these criminal contempt sentences, and assuming there were no other charges or sentences against Lindke, the only times Lindke could have been eligible for good time credits during the gaps in these sentences were the following:

1. June 12, 2021 to June 21, 2021, a period of ten (10) days based upon the March 30, 2021 sentence.

2. October 13, 2021 to October 14, 2021, a period of two (2) days based upon the July 29, 2021 sentence.

3. December 30, 2021 to January 3, 2022, a period of five (5) days based upon the October 15, 2021 sentence. However, Plaintiff did not include

6 and subtracting that number from the days of the sentence. Even though it is not required by the statute, once a sentence exceeds 5 days, the Jail also counts each fraction of a "good time" day as a full day. For example, on a sentence for 15 days, 15/6 equals 2.5 days, which is rounded up to 3 days, so the good time "outdate" is after 12 days served.

this sentence as one of the basis upon which he was seeking relief (see ¶22, ECF No. 13, PageID.1266).

Unfortunately for Lindke, during each of these time periods (totaling 17 days) he was also being held on other pending matters, which made him ineligible for release regardless of the good time issue. As set forth above, Lindke was being held on a $25,000 cash surety bond based upon five pending felony charges issued on December 30, 2020 (see Ex. 14) and on $10,000 cash surety bond based upon felony charges relating to his March 3, 2021 arrest (Id). Thus, during the ten (10) day period of June 12, 2021 to June 21, 2021, and the two (2) period of October 13, 2021 to October 14, 2021, Lindke was being held as a pre-trial detainee on other charges and not eligible for release regardless[8]. Moreover, as a result of a plea deal on the charges in both pending cases, on November 29, 2021, Lindke was sentenced to "time served" covering the time period of March 3, 2021 to November 29, 2021, a period of 272 days.

The same is true as to the five (5) day period of December 30, 2021 to January 3, 2022. On December 16, 2021, after finding Lindke guilty of another PPO violation, Judge Tomlinson revoked Plaintiff's $5,000 bond posted in Case No. 20-001291-PP pending the January 4, 2022 sentencing hearing due to his concern that

[8] A pretrial detainee does not earn good time credit while being held pending the posting of bond. *People v. Browning*, No. 224523, 2001 Mich. App. LEXIS 2236, at *4 (Jan. 16, 2001)("Because Browning was not serving a sentence while being held in jail pending trial, he was not entitled to good time credit under the statute").

he was a flight risk (see Exs. 16 and 20). Thus, Lindke was also not eligible for release at that time either.[9]

Thus, since each of Plaintiff's claims are premised upon the theory that he was incarcerated during times he should have been released, his claim fails as a result of the undisputed facts showing otherwise.

4. Because the Right Specified in the Good Time Statute is Only a Limited One, Plaintiffs are Not Entitled to Monetary Damages

As set forth above, there is no United States Constitutional right to good-time credit except as created by a state statute, in this case, the Michigan Good Time Credit Statute, MCL 51.281. However, when a state creates a liberty or property interest, the state statute defines the parameters of such a right. See *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)

As Defendants raised in their motion to dismiss (and the Court allowed the Defendants to re-raise by way of a motion for summary judgment) the right created by the Michigan Statute is a limited right – it allows a person who believes they are entitled to be released to good time credit to seek a court order to that effect – not file a damage claim after the fact. The statute expressly states that:

> … no sheriff shall be liable to respond to any prisoner or former prisoner in damages in any form of action, particularly false

[9] It should be noted that Lindke still had, at a minimum, 25 days to serve on his January 4, 2022 sentence, which he has never served, which more than offsets the 17 day period regardless.

> imprisonment, if any excess time up to the maximum of the original sentence without good behavior allowance be served. [MCL 51.283.]

Thus, the statute that created the right to good time credit created a limited right—it requires the inmate to bring the issue to the attention of the sheriff, and if the sheriff does not grant the good time credit, the remedy is limited to the state equivalent of a writ of habeas corpus or a federal writ of habeas corpus, i.e., a remedy other than a claim for monetary damages. See e.g., MCR 6.500 et seq; *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)(when an individual is challenging the "fact or duration of his confinement", the exclusive remedy is a writ of habeas corpus, not a Section 1983 claim).

Plaintiff asserts that his right to monetary damages is governed by 42 U.S.C. § 1983 because Section 1983 creates a right to damages for a constitutional violation. However, Section 1983 merely protects the rights a person already holds, "it did not provide a right to damages where none existed before". See *Crocker v. Tennessee Secondary Sch. Athletic Ass'n*, 980 F.2d 382, 387 (6th Cir. 1992)(because damages not available under Education of the Handicapped Act ("EHA"), 20 U.S.C. § 1400 et. seq., plaintiff cannot recover damages under Section 1983 for any violation of rights secured by EHA).

Again, this is not an immunity issue and the case offered by Plaintiff, the *Martinez v. Cal.*, 444 U.S. 277, 283-84 (1980), is clearly distinguishable. In *Martinez*, the Section 1983 claim was not based the rights set forth in the state statute

– it was based upon the claim that plaintiff has been "deprived of a right 'secured by the Constitution and laws' of the United States" when a parolee released by defendants killed a 15 year old girl, and the defendant was attempting to invoke a state immunity statute. In this case, the "no money" provision is in the statute which creates the alleged rights upon which the constitutional claims are based – which is a significant difference.

Again, where the state statute creates the right, that right is necessarily limited by the state statue, and thus does not include a claim for money damages. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)

D. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY AS TO THE DAMAGE CLAIMS

Plaintiffs have sued the individually named Defendants in their official capacities and in their individual capacities. The official capacity claims must be premised upon a *Monell* theory, and thus based upon the jail policy, so they are in reality a suit against the County, which is already a party, so there is no reason to keep the remaining defendants in the case if the individual capacity claims are dismissed. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). The claims against Defendants in their individual capacities are protected by qualified immunity.

"Qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of

which a reasonable person would have known." *Brown v. Chapma*n, 814 F.3d 447, 457 (6th Cir. 2016) (citations omitted). "This immunity 'gives government officials breathing room to make reasonable but mistaken judgments about open legal questions,' 'protect[ing] all but the plainly incompetent or those who knowingly violate the law.'" *Jacobs v. Alam,* 915 F.3d 1028, 1039 (6th Cir. 2019) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)). Thus, as the Sixth Circuit has explained, a "defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite [such] that any reasonable official in the defendant's shoes would have understood that he was violating it. In other words, existing precedent must have placed the statutory or constitutional question confronted by the official beyond debate." *Wenk v. O'Reilly,* 783 F.3d 585, 598 (6th Cir. 2015) (citations omitted).

In this case, Plaintiffs' complaint alleges that Defendants implemented the policy in question despite existing decades old precedent barring a trial court from taking away good-time credit in advance (See ¶15, ECF No. 13, PageID.1265). However, the cited case, *People v. Cannon*, 206 Mich. App. 653, 655 (1994) was a criminal case, not a contempt case. As set forth above, there is a legitimate legal question about whether that holding would apply to a contempt sentence issued by a judge in a civil case. The precedent that first applied the Good Time statute to a contempt sentence, *ARM v. KJL,* was not issued until after Plaintiff was already released from jail, and after the jail changed its policy.

Here, the existing precedent, even if this court agrees with Plaintiff, did not place the question "beyond debate". In fact, the policy was implemented originally at the suggestion of the judge, the policy was approved by the Chief Judge, the judicial orders in question specifically directed the jail administrators to not provide good time credit to defendants, and the only Attorney General Opinions touching upon the issue (see Exs. 1 and 2), suggested that good time credit was not available on contempt sentences. Given these legal uncertainties, Defendants are each entitled to qualified immunity.

CONCLUSION

Based upon the foregoing arguments and authorities, Defendants request that this Court grant their motion for Summary Judgment and dismiss the case in its entirety.

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DATED: January 18, 2024

The undersigned certifies that a copy of the foregoing instrument was served upon attorney for Plaintiff by electronic filing on January 18, 2024.

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