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.

PHILIP L. ELLISON (P74117)
Outside Legal Counsel PLC
Attorney for Plaintiffs
P.O. Box 107
Hemlock, Michigan 48626
(989) 642-0055
pellison@olcplc.com

MATTHEW E. GRONDA (P73693)
Attorney for Plaintiffs
PO Box 70
St Charles, Michigan 48655
(989) 249-0350
matt@matthewgronda.com

TODD J. SHOUDY (P41895)
VICTORIA R. FERRES (P78788)
Fletcher Fealko Shoudy & Francis, P.C.
Attorneys for Defendants
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
tshoudy@fletcherfealko.com
vferres@fletcherfealko.com

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION (ECF. NO. 50) TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT (ECF No. 45)

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 files the attached Brief in Support of its Reply to Plaintiffs' Response to Defendants' Motion for Summary Judgement.

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Defendants

By: /s/ Todd J. Shoudy
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
Michigan Bar #41895
tshoudy@fletcherfealko.com

DATED: February 22, 2024

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1411 Third Street, Suite F
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tshoudy@fletcherfealko.com
vferres@fletcherfealko.com

DEFENDANTS' BRIEF IN SUPPORT OF DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION (ECF. NO. 50) TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT (ECF No. 45)

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I. MCL 51.282 Does Not Apply to Contempt Sentences

In their response brief, Plaintiffs argue that "Defendants are just flat wrong when asserting that a Michigan 'contempt sentence is a different animal from that of a criminal sentence.'" (ECF No. 50, PageID.2359). In support of that position, Plaintiff makes too much of a single sentence from the Michigan Supreme Court ruling in *People v. Joseph*, 384 Mich. 24, 33 (1970)("contempt is a crime in the ordinary sense"). Ironically, Plaintiff cites the very case which specifically held that the Court was not bound by a legislative determination when it comes to contempt, because it falls within the inherent powers of the judicial branch. *Id* at 35.

Plaintiffs' argument also ignores the United States and Michigan Supreme Court opinions which have specifically recognized that "contempt" is "sui generis" in nature, and thus is unique and in a class of its own and is therefore different from a legislatively determined "crime". See, e.g., *Gompers v Bucks Stove & Range Co*, 221 U.S. 418, 441 (1911)(contempts are "neither wholly civil nor altogether criminal"); *In re Contempt of Dougherty*, 429 Mich. 81, 90-91 (1987)(also stating "contempts may be said to be criminal in nature because they permit imprisoning a contemnor for willfully failing to comply with an order of the court", or "quasi-criminal" and such "proceeding occupies what may be termed the twilight zone between civil and criminal cases . . . ."); *People v Joseph* supra at 35 ("criminal contempt is also distinguishable from other crimes").

Plaintiffs response also ignores case law from other states which have applied this distinction to virtually identical state good time statutes[1]. Although such rulings are not binding, they are "highly instructive" (see *A&E Parking v. Detroit Metro. Wayne County Airport Auth.*, 271 Mich. App. 641, 645 (2006) and *Toussaint v. Blue Cross & Blue Shield*, 408 Mich. 579, 602-604 (1980)). The Sixth Circuit has sanctioned the practice of using the rulings of other states in the interpretation of a statute where "there is little Michigan authority" on an issue. See *Universal Image Prods. v. Fed. Ins. Co.*, 475 Fed. Appx. 569, 573 (6th Cir. 2012).

Plaintiffs also argue that this issue has already been settled by the Michigan Supreme Court. As Defendants explained in their previous filings (see ECF No. 49, arguments at PageID.2334-2337), that claim is not accurate. In fact, the Michigan Supreme Court has never ruled on the two salient issues here: (1) whether a judge has the power to issue a contempt sentence denying an individual entitlement to good time credit, and (2) whether the good time statute applies to contempt sentences. It has never considered the same issues as other State Supreme Courts have done in Kansas, Arkansas, Indiana, Tennessee, and South Carolina, all of which have held that their own good time statutes do not apply to contempt sentences.

[1] Arkansas and Tennessee good time statute uses virtually identical terminology "may be entitled to a reduction … from … his or her sentence to be served in the county jail …" (Arkansas Code §12-41-101) and "[e]ach such prisoner who has been sentenced to the county jail" (Tenn. Code §41-2-111(b)). Indiana's statute says it applies to a "person … imprisoned for a crime or confined awaiting trial or sentencing". Indiana Statutes §35-50-6-3. The South Carolina statute applies to "An inmate convicted of an offense against this State". S.C. Code §24-13-210(A).

Finally, Plaintiffs claim that the fact that the Sheriff changed the policy is inconsistent with Defendants' position here. That too is not accurate. The Sheriff did not change its policy until after the December 14, 2021 ruling by the State Court which reached the incorrect legal conclusion that the good time statute did apply to a contempt sentence (see ECF No. 45-15, PageID.2128).

II. Quasi-Judicial Immunity

In their response Brief, Plaintiffs claim that Defendants are not entitled to quasi-judicial immunity because "'no goodtime' was never part of the criminal sentence" (PageID.2350). This claim is not accurate – in fact, Plaintiff Lindke successfully appealed his sentencing orders arguing that the sentencing orders were erroneous because they denied him good time. See *ARM v. KJL*, 342 Mich. App. 283, 302 (2022)("And yet, this [taking away good time credit in a sentencing order] is precisely what the trial court did here") and *ARM v. KJL (In re KJL)*, 2023 Mich. App. LEXIS 5358, *16-18 ("Respondent next argues that the trial court erred by ordering that he was not entitled to good-time credit" and "the trial court's sentencing orders both stated that respondent was not entitled to good-time credit").

Plaintiff next argues that Defendants are only entitled to quasi-judicial immunity if the order is a "valid" order, and not a "tainted court order" and the "no good time" sentencing orders were unlawful (PageID.2364). The proper standard is whether the orders were "facially valid", not whether the orders were legally correct or later reversed, because an erroneous order can still be a valid order. See *Baker v.*

McCollan, 443 U.S. 137, 143-144 (1979)("Respondent was indeed deprived of his liberty for a period of days, but it was pursuant to a warrant conforming, for purposes of our decision, to the requirements of the Fourth Amendment"); *United States v. United Mine Workers of America*, 330 U.S. 258, 293 (1947)("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").[2]

III. Plaintiffs Are Bound by the Limitations in the State Statute

The entire basis of all of Plaintiffs' Constitutional claims are that a constitutional right to liberty was created by a state statute, i.e., MCL 51.281 et seq. Yet, Plaintiffs brief seems to argue that they can maintain such a claim while ignoring all of the statutory provisions setting forth the limits and parameters of the state statute, which is contrary to seminal United States Supreme Court precedent on this issue. 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); *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-65 (1989)(same as to liberty claim).

This principle defeats plaintiffs' claims because (1) the right creates a limited right – it creates a right to seek a release from the sheriff and the courts, but not a right to seek damages[3], (2) the right to a release does not exist unless the inmate first

[2] Schultz' *Heck* response relies upon the same erroneous theory (PageID.2368-2369).

[3] While Plaintiffs cite case law that has held that municipal employees are not immune to Section 1983 claims, there is not a single case cited which involves a no damage provision in the very

requests to be released, and (3) as to Plaintiff Lindke, he has no entitlement to good time credit, and thus did not have a constitutional right to an early release since his jail record did not "show that there are no violations of the rules and regulations", the statutory prerequisite for an entitlement to release set forth in MCL 51.282.

As this court is aware, a plaintiff "cannot possess a property interest in the receipt of a benefit when the state's decision to award or withhold the benefit is wholly discretionary." *Med Corp., Inc. v. City of Lima,* 296 F.3d 404, 409 (6th Cir. 2002); see also *Roth,* supra at 577 (An expectation or hope is not enough, "He must, instead, have a legitimate claim of entitlement to it"). Lindke had no constitutional right to good time credit because he did not meet the prerequisite of such release, i.e., having a clean record, and there was no statutory provision mandating a release when there are adjudicated jail violations on an inmate's jail record. Thus, good time credit was discretionary, and there is no constitutional right or entitlement to a release when government officials may grant or deny it in their discretion. See *Kentucky Dep't of Corrections v. Thompson,* supra at 462-65 (1989)("the fact that certain state-created liberty interests [including good time statutes] have been found to be entitled to due process protection, while others have not, is not the result of this Court's judgment as to what interests are more significant than others; rather, our

statute upon which Plaintiffs' constitutional right was allegedly created. Plaintiffs are asking this court to find a right from a state statute, but to ignore the part of the statute that limits that right.

method of inquiry in these cases always has been to examine closely the language of the relevant statutes and regulations" and here "the regulations at issue here, however, lack the requisite relevant mandatory language" and thus "do not establish a liberty interest entitled to the protections of the Due Process Clause"); *Olim v. Wakinekona*, 461 U.S. 238, 249-51 (1983)(same); *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)("a benefit is not a protected entitlement if government officials may grant or deny it in their discretion"). [4]

In response to Defendants' argument that Plaintiffs admitted in their depositions that they failed to request to be released as required under the good time statute, both Plaintiffs submitted declarations contradicting their deposition testimony and are now saying they did make such a request "verbally". For example, Plaintiff Lindke admitted in his deposition that he did not raise the good time issue until September 27, 2021, and now has submitted an Affidavit saying he did so earlier in 2021, and also did so when he served a sentence in 2019 (see ECF No. 50-15).[5] However, Lindke's deposition testimony was very specific, and directly to the contrary:

> Q. All right. In all of your past jail stays, the good time issue never came up?
>
> A. Yeah. Because I wasn't aware at the time of, you know, MCL 51.282.

[4] The issue of due process does not come into play unless there is an "entitlement" to an early release. *Roth* supra at 577; *Olim* supra at 250-251.

[5] Mr. Lindke's reference to 2019 is irrelevant because the 2019 sentence is not challenged in this lawsuit. His lawsuit is specifically limited to only the Mar. 30, 2021, June 22, 2021 and July 29, 2021 sentences [ECF No. 13, PageId.1266, ¶22].

Q. Okay. So September 27th is when you figure out there's this good time issue, and then you raised it by this kite, correct?

A. Yeah (Pl. dep., p. 37).

It has long been established in this Circuit that "[a] party may not create a factual issue by filing an affidavit, after a motion for summary judgment has been made, which contradicts her earlier deposition testimony." *Reid v. Sears, Roebuck and Co.*, 790 F.2d 453, 460 (6th Cir. 1986). Thus, the proffered affidavits should be rejected.

IV. THE OTHER ARGUMENTS

Defendants stand by their other arguments. For example, while Plaintiff Lindke argues that there was not "overlapping sentences" as to all times that would prevent his release, he ignores his 272-day criminal sentence (ECF No. 45-22).

As to the qualified immunity issue, he ignores that there was no Michigan case law applying the good time statute to contempt sentences until after the events raised in this lawsuit.

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Defendants
By: /s/ Todd J. Shoudy
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
Michigan Bar #41895
tshoudy@fletcherfealko.com

DATED: February 22, 2024

The undersigned certifies that a copy of the foregoing instrument was served upon attorneys for Plaintiff on February 22, 2024 by electronically filing this document using the Court's ECF system.

/s/ Theresa A. Messing

Fletcher Fealko Shoudy & Francis, P.C.
1411 Third Street Suite F
Port Huron, Michigan 48060
(810) 987-8444
tmessing@fletcherfealko.com