

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0974

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JEFFERY SANDERS,

PETITIONER-APPELLANT,

V.

**MICHAEL J. SULLIVAN, ROBERTA L. OTIS,
PERCY H. PITZER, BARBARA ZINK, GERI YOUNGWIRTH,
AND CHERI ROSE,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Jeffery Sanders appeals from an order quashing his writ of habeas corpus seeking an adjustment of his mandatory release date. We affirm.

Sanders was sentenced to a forty-five-year prison term in 1976. He argues, and the department now agrees, that his sentence is under § 53.11, STATS., 1975. The arguments in this case relate to certain statutory provisions from that time. Under old law, a prisoner's sentence is reduced in particular amounts for conducting himself in a proper manner and performing the duties required of him, and this is known as "good time." *See* § 53.11(1), STATS., 1975. An inmate "whose diligence in labor or study surpasses the general average" is entitled to a further reduction of sentence, and this is known as "extra good time." *See* § 53.12, STATS., 1975.

The parties appear to agree that Sanders' mandatory release date was originally calculated as February 9, 1997, but by 1987 had been extended due to conduct reports resulting in forfeiture of good time, presumably under § 53.11(2), STATS., 1975. Sanders was transferred to federal custody in 1988. The department appears to have advised the federal authorities that his mandatory release date was February 9, 1997. In 1996, the department apparently attempted to change that date to a later one. This led to Sanders' administrative efforts to retain that release date and eventually to the habeas petition now before us.

Sanders' argument appears to proceed as follows. With good time under § 53.11(1), STATS., 1975, his mandatory release date would have been February 9, 1997. Although this release date was originally extended by the conduct reports, the department changed it back to February 9, 1997, when it transferred him to the federal system. The department did so intentionally, to implement his right to earn extra good time under § 53.12, STATS., 1975. When the department attempted to "correct" his release date in 1996, it essentially revoked the extra good time he has earned since 1988, without providing him with due process.

We reject the argument. We see nothing in § 53.12, STATS., 1975, that would have allowed or required prison officials, at the time of the 1988 transfer, to adjust Sanders' release date to reflect extra good time that he might earn in the future. The argument is not supported by any express statement of the department that this was what it was doing. The earning of extra good time, and the resulting adjustment to his release date, could not be predicted or calculated in advance. Because we conclude that the department did not adjust Sanders' release date in 1988, we do not consider whether the department erroneously "revoked" that extra good time in 1996.

This conclusion leaves unanswered the question of why the department appears to have advised the federal system that Sanders' release date was February 9, 1997. In this appeal, the department does not appear to dispute that this occurred or offer an explanation, nor have we attempted to find an answer. We also note that we are not deciding whether Sanders is entitled to extra good time for any time after 1988. So far as we can see from this record, he has not asked the department to calculate such time, and he has not argued here that it failed to follow appropriate procedures for determining his eligibility for extra good time.

We conclude only that Sanders' present arguments are not grounds to make his release date other than what the department currently calculates.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

