

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2008-341

APR 15 2009

APRIL TERM, 2009

Stephen Bain

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APPEALED FROM:

v.

Washington Superior Court

Robert Hofmann

DOCKET NO. 810-12-07 Wncv

Trial Judge: Dennis R. Pearson

In the above-entitled cause, the Clerk will enter:

Petitioner Stephen Bain appeals the superior court's July 29, 2008 decision granting the State's motion for summary judgment with respect to his petition for a writ of habeas corpus. We reverse the decision, and remand the matter for further consideration.

This matter has a long history dating back several years and has wound its way through state and federal courts. The gist of petitioner's claim is that he was prevented from participating in prison work camp because of a disability, in violation of Title II of the Americans with Disabilities Act (ADA), thereby depriving him of good-time credits that would have reduced his term of imprisonment. Noting that Title II of the ADA requires only necessary and reasonable accommodations for demonstrated disabilities, the superior court granted the State summary judgment and dismissed the petition based upon its conclusion that the only accommodation petitioner had requested—retroactive good-time credits for work camp in which he had not actually participated—was, as a matter of law, an unreasonable accommodation. On appeal, the State asks us to affirm the court's decision, arguing that petitioner may not obtain credit for work he did not do, given the rehabilitative purposes of work camp. The State also briefly argues that confinement at work camp is a statutory prerequisite to earning work-camp credit. See 28 V.S.A. § 811 (providing that credit "may be made in accordance with a policy established by the director of a work camp in which an inmate is confined" when the inmate demonstrates meritorious work performance).

We conclude that the superior court erred in conflating the concepts of accommodation and remedy. Petitioner has argued that the Department of Corrections could have provided, but did not provide, reasonable accommodations for his alleged disability; the remedy he seeks in his habeas corpus petition for its failure to accommodate the disability is the retroactive award of good-time credit for the periods of time during which he should have been given the opportunity to participate in the work camp. During the proceedings, the superior court ruled that it would treat petitioner's claim as one made under V.R.C.P. 75 (review of governmental action), stating

that it was not persuaded that seeking review of a denial of good-time credit was sufficient to properly state a claim for relief pursuant to a writ for habeas corpus. But see Shuttle v. Patrisi, 158 Vt. 127, 130 (1992) (holding that “habeas corpus, when properly invoked by an inmate, provides a means of reviewing prison disciplinary measures that serve to prolong his period of incarceration”); Wilkinson v. Dotson, 544 U.S. 74, 79 (2005) (“Because an action for restoration of good-time credits in effect demands immediate release or a shorter period of detention, it attacks the very duration of physical confinement, and thus lies at the core of habeas corpus.” (quotations omitted)). Petitioner challenges the court’s characterization of his action, but the State does not respond to this claim of error.

In the end, the court ruled that even if petitioner’s rights were violated, there is no available remedy. We cannot subscribe to such a broad holding. If a habeas corpus petitioner can demonstrate that he was wrongfully denied the opportunity for good-time credit, a court may award retroactive good-time credit as a remedy for the violation. See Basque v. Schwartz, 2009 WL 187920, at *2-*3 (E.D. Cal.) (citing cases in support of the holding that a petitioner unlawfully denied the opportunity to earn work credits could obtain relief in the form of a retroactive award of good-time credits not actually earned).^{*} Accordingly, the remedy petitioner seeks is not foreclosed, assuming that he filed a legitimate habeas corpus petition and can prove the underlying violation.

In the alternative, the State argues that, irrespective of any disability, petitioner was not qualified to participate in the work program for other reasons. The superior court refused to address whether there were facts in dispute relative to this argument, and we decline to address it without a trial court decision. For similar reasons, we decline to address the State’s argument that the Department of Corrections properly exercised its discretion in denying work camp to petitioner. The State may renew these arguments on remand, if it so chooses. Finally, the State argues that petitioner’s claims are barred by the doctrine of res judicata. The United States District Court already rejected the State’s res judicata argument in the context of petitioner’s federal habeas corpus petition. See Bain v. Hoffman, 2006 WL 3328016, at *4 (D. Vt.) (noting that the writ of habeas corpus is a major exception to the doctrine of res judicata). This Court has recently set forth the procedure for having a habeas corpus petition dismissed as successive. See In re Laws, 2007 VT 54, ¶¶ 14, 22, 182 Vt. 66 (noting that res judicata has traditionally not been applied to habeas corpus relief, and holding that the State has the burden of pleading abuse of the writ, upon which the burden shifts to the petitioner to show cause and actual prejudice). The ADA claim that petitioner raises in this case has not been adjudicated in any of the prior cases. We find nothing in the record indicating that the State has claimed an abuse of the writ.

In sum, on remand, the superior court may consider the State’s alternative arguments, including its argument that petitioner was precluded from participating in work camp for legitimate reasons unrelated to his ADA claim. To the extent that the court relies upon the

^{*} To the extent the State argues that such a remedy is foreclosed by § 811, we note that the statute requires the award of credit to which an inmate is entitled prior to July 1, 2005, “consistent with those provisions of 28 V.S.A § 811 that were in force when the inmate’s crime was committed,” 2005, No. 63, § 2(a), and that the applicable prior version of the statute allowed good-time credit for treatment programs or work that the inmate agreed to do but was unable to do for lack of an opportunity. See 28 V.S.A. § 811(c) (repealed by 2005, No. 63, § 3).

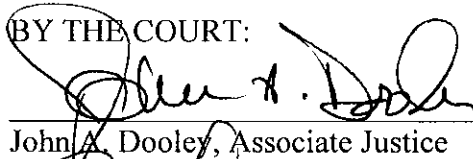
State's arguments related to claim preclusion, it must re-evaluate, in light of Shuttle, whether petitioner has filed a legitimate petition for habeas corpus, and depending on its resolution of that question, whether the State has met the criteria set forth in Laws.

We have two final observations. We note that, without seeking permission from this Court, petitioner filed a fifty-three-page appellant's brief and a thirty-page reply brief, both well in excess of the word limit provided by rule. Should this case return to this Court following remand, no brief will be accepted by this Court from appellant unless it satisfies the designated word limit.

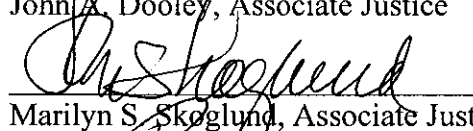
Second, as the State and the trial court have emphasized, the matters in this case have been raised over and over again, but never seem to reach a conclusive resolution, and have never been addressed on the merits. Since the State has alleged that petitioner would not have been placed in a work camp irrespective of any disability he may have had, it may be preferable to resolve that question rather than engage in more procedural skirmishing.

Reversed and remanded.

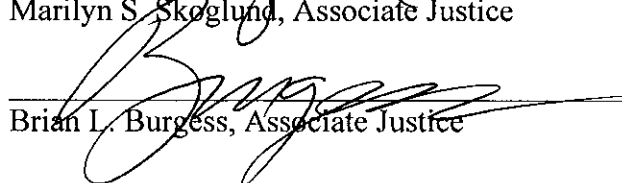
BY THE COURT:



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice