

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-115

AUGUST TERM, 2002

Terry Cadorette, Douglas	}	APPEALED FROM:
Gardner, Sean Kellecher, Frank	}	Orleans Superior Court
Highley, William Grzywna and	}	
David Durgin	}	DOCKET NO. 184-7-01 Osecv
v.	}	Trial Judge: Dennis R. Pearson
John Gorczyk, et al.	}	
	}	

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

Plaintiff inmates appeal the superior court's dismissal of their complaint challenging the methodology applied by the Department of Corrections when calculating credit for good behavior. We affirm.

In August 2001, plaintiffs filed a complaint alleging that the Department was improperly calculating credit for good behavior under 28 V.S.A. 811(a) by not awarding inmates credit until after they had completed each thirty-day period of incarceration. According to plaintiffs, the Department was required to give them credit for good behavior when they began serving their sentence rather than incrementally at the completion of each month of incarceration. For example, under the plaintiffs' proposed methodology, an inmate given a twelve-month sentence would be conditionally awarded sixty days of good-time credit when he began serving his sentence (five days for each month of the sentence imposed), and thus, assuming no prison rule violations, would be released after serving ten months. On the other hand, under the Department's methodology, the same inmate would have received only fifty days of good-time credit at the end of ten months, and thus would have to serve ten days of the eleventh month. The superior court construed the inmates' complaint as one for review of governmental action under V.R.C.P. 75, and rejected their argument, ruling that the plain meaning of 811(a) calls for good-time credit to be applied at the completion of each month of incarceration.

We find no error in the superior court's decision. Section 811(a) provides that an incarcerated inmate "shall earn a reduction of five days in the maximum term of confinement for each month during which the inmate has faithfully observed all the rules and regulations of the institution to which the inmate is committed." Under the plain meaning of this provision, an inmate cannot "earn," and thus be given credit for, good behavior until he has completed a thirty-day period of incarceration in which he "has faithfully observed all the rules and regulations." Indeed, in a related context, we have held that 811(a) "states unequivocally that good-time credit is earned after a month of appropriate behavior." Venman v. Patrissi, 156 Vt. 257, 258 (1991) (emphasis added) (holding that 811(a) does not apply to partial month). In short, credit for good behavior is awarded at the end of each month actually served, not for every month of the sentence imposed.

Further, on appeal Plaintiff claims that the Department is required to provide monthly notices for automatic reductions of term. Because Plaintiff failed to raise this issue before the trial court, thereby preserving it for this appeal, it is deemed to be waived and the Court will not review it. See State v. Prue, 138 Vt. 331, 332 (1980)(Court will not consider matters raised for the first time on appeal).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice