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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-391

FEBRUARY TERM, 2005

In re Armand Leggett, Jr.	}	APPEALED FROM:
	}	
	}	
	}	Chittenden Superior Court
	}	
	}	
	}	DOCKET NO. S1549-03 CnC
		Trial Judge: Matthew I. Katz

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

Petitioner appeals the superior court's order rejecting his claim that the Department of Corrections failed to follow its own regulations in determining which version of 28 V.S.A. § 811(a) to apply in calculating automatic and earned reduction of term with respect to his sentence. We reverse.

In September 2003, petitioner was sentenced to six concurrent terms of two-to-ten years after pleading guilty to six separate counts of false pretenses. The first of his six offenses occurred on April 4, 2000, while each of the other five occurred after July 1, 2000. In December 2003, petitioner filed a complaint in superior court, arguing that the Department of Corrections had failed to follow its own regulations by calculating his automatic and earned reduction of term based on the 2000 amendment to 28 V.S.A. § 811(a) rather than the 1994 version of the statute. Petitioner prefers the 1994 version because it calls for a reduction of term against both the minimum and maximum terms of a sentence, while the 2000 amendment allows credit against only the maximum term. Thus, under the 1994 version, petitioner's minimum sentence would be one year and eight months rather than two years under the 2000 amendment. The superior court rejected petitioner's complaint, ruling that there was a reasonable statutory basis for the Department's computation.

On appeal, petitioner repeats his argument that the Department should have calculated his reduction of term under the 1994 version of § 811(a) rather than its 2000 amendment. We agree. Within thirty days of sentencing, the Department is required to provide the court with a calculation of the potential shortest and longest sentence taking into account, among other things, reductions in term under 28 V.S.A. § 811. 13 V.S.A. § 7044. Between 1994 and 2000, § 811(a) allowed each inmate the opportunity to earn "a reduction of five days in the minimum and maximum terms of confinement" for each month that the inmate followed the rules of the penal institution, but under the 2000 amendment, each inmate is eligible to earn five days per month only "in the maximum term of confinement." Anticipating issues arising over when to apply the different versions of § 811(a), the Department's Sentence Computation Guidebook provides as follows:

> CASES WHERE OFFENDER IS INCARCERATED UNDER MORE THAN ONE REDUCTION OF TERM SYSTEMS:
>
> Look to the date of the controlling sentence; check the affidavit, DDR's or other supporting documents to determine the date(s) of the offense(s). If at least one offense occurred before

> July 1, 1994, the offender is to be awarded reduction of term under the old system (10 days per month ART, up to 5 days per month ERT deducted from both minimum and maximum). If at least one crime was committed between July 1, 1994 and before July, 1, 2000, and none prior to July 1, 1994, the offender is to be awarded reduction in term under the 1994 system (5 days ART, up to 10 days ERT deducted from both minimum and maximum). If the crime(s) of the controlling sentence was (were) committed on or after July 1, 2000, the offender is to be awarded reduction of term under the 2000 system (5 days ART and up to 10 days ERT deducted from **maximum only**).

Dept. of Corrections, Sentence Computation Guidebook 16 (2000) [hereinafter Guidebook] (Underlined for emphasis).

The situation in this case appears to fall squarely within the underlined sentence above because petitioner committed at least one of his crimes between July 1, 1994 and July 1, 2000, but none before July 1, 1994. The superior court rejected this result, however, based on the State's argument that the Legislature intended offenders who receive concurrent sentences for multiple crimes to serve the longest possible minimum and maximum sentences. The State argues as follows. Under 13 V.S.A. § 7032(c)(1), when terms of imprisonment "run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum." This legislative command is adopted in the Department's Sentence Computation Guidebook, which provides that "the effective minimum [for concurrent sentences] is, essentially, the longest minimum imposed on any of the multiple sentences." Guidebook, at 16. The Guidebook explains that the effective sentence is "the single sentence arrived at after computations are made in regard to the individual sentences imposed." Id. According to the State, because the sentence for the petitioner's April 4, 2000 offense would be less than the other five in the event the 1994 reduction of term were applied, the 2000 reduction of term must be applied to comply with the Legislative mandate requiring inmates to serve the longest minimum.

We decline to accept this circular reasoning. The legislative mandate of § 7032(c)(1) was satisfied at the time of sentencing when the court merged the minimum and maximum terms of each offense and sentenced petitioner to a single concurrent sentence of two-to-ten years. In this case, the sentence for each of the offenses was the same—a two-year minimum and a ten-year maximum; therefore the effective concurrent sentence was two-to-ten years. Section 7032(c)(1) having been satisfied, a completely independent question arises as to what reduction of term is appropriate. The Department's Sentence Computation Guidebook provides that reduction of term is calculated by looking at the date of the controlling sentence and checking the dates of the offenses. By way of explanation, the guidebook provision sets forth three scenarios for calculating which version of § 811(a) to apply. The instant case falls within the second scenario, which calls for applying the 1994 version of the statute. It is unclear what the guidebook means when it refers to the date of the controlling sentence, but even assuming it means the effective sentence, as the State argues, that sentence is two-to-ten years, with each offense having an equal term. Thus, the plain language of the Sentence Computation Guidebook, which calls for applying the 1994 version of § 811(a), is consistent with § 7032(c)(1).

Reversed. The Department of Corrections is directed to apply the 1994 version of 28 V.S.A. § 811(a) in calculating earned and automatic reduction of term with respect to petitioner's sentences.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned