

Case Notes

Murder defendant's 30-year mandatory minimum term of imprisonment was not subject to reduction through application of commutation and work credits. *Merola v. Department of Corrections*, 285 N.J.Super. 501, 667 A.2d 702 (A.D.1995), certification denied.

10A:9-5.3 Forfeiture of commutation credits and work credits

(a) Pursuant to N.J.S.A. 30:4-140 et seq., commutation credits and work credits may be declared to be forfeited as a penalty for misconduct.

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1. Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Administrator or designee, who may approve or modify the amount of credits forfeited.

2. In no case shall more than 365 days of commutation and 72 work credits be declared forfeited for any single disciplinary offense. Work credits shall not be forfeited for commission of a prohibited act unless authorized by law.

(b) Pursuant to N.J.S.A. 30:4-16.2, commutation credits shall be declared to be forfeited when any civil action or proceeding filed by an inmate in a New Jersey State court, in which the defendant was represented by the Attorney General or county counsel, has been determined by the court to be frivolous because the civil action was filed:

1. To harass or retaliate against another individual;
2. To disrupt or interfere with the operation of the correctional facility; or
3. For some other malicious purpose.

Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised section.

Amended by R.1996 d.557, effective December 2, 1996.

See: 28 N.J.R. 4155(a), 28 N.J.R. 5073(b).

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

In (a), changed N.J.S.A. reference and inserted a reference to work credits in the introductory paragraph, and substituted a reference to the Administrator for a reference to the Superintendent in 1. Petition for Rulemaking.

See: 32 N.J.R. 3499(a).

Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

In (a)1, deleted "commutation" preceding "credits"; in (a)2, added "and 72 work" after commutation, also added a sentence; in (b), amended the N.J.S.A. reference and inserted "in a New Jersey State Court" following "inmate".

10A:9-5.4 Forfeiture of commutation credits by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation credits in the event the parolee violates a condition of parole.

Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised section.

10A:9-5.5 Restoration of forfeited commutation credits

(a) Commutation credits forfeited for a civil action or proceeding filed by an inmate determined to be frivolous by the court shall not be eligible for restoration.

(b) An inmate approaching the expiration of his or her maximum sentence is eligible for only that prorated portion of restored commutation credits that allows for all timely release notifications required by law, such as N.J.S.A. 30:4-6.1(a).

(c) The following procedures for restoring forfeited commutation credits apply to all inmates who received charges for acts which occurred on or after May 24, 1979, except as otherwise set forth in this section.

1. Up to 75 percent of the forfeited commutation credits may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i. If the inmate completes only one year without a charge which results in a guilty finding, he or she will have 25 percent of the forfeited credits restored at the completion of that year.

ii. If the inmate completes any two years of the three year period without a charge which results in a guilty finding, he or she will have 50 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective two years.

iii. If the inmate completes all three years without a charge which results in a guilty finding, the inmate will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. The inmate, therefore, has 25 percent of his or her commutation credits restored. The inmate is again free of guilty findings from January 25, 1986, to January 25, 1987, an additional 25 percent of his or her commutation credits is restored. From January 25, 1987 to January 25, 1988, the inmate is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since January 1, 1985, the date which resulted in the loss of commutation credits.

2. Credits will be restored to the above regardless of the inmate's housing assignment.

(d) An inmate who receives a parole date at any point in the third one year period and has been without a charge which results in a finding of guilt during both the first and second one year periods may, at the discretion of the Administrator, have the commutation credits which the inmate could earn in the third year period restored on a prorated basis.

1. A grant of credits on a prorated basis is applicable only when the parole date falls in the third one year period and only where the inmate has had 50 percent of the forfeited credits already restored.

2. Such action shall be taken only in exceptional cases for good cause shown.

(e) Any inmate who feels that he or she meets the qualifications for restoration must submit an application for restoration of commutation credits to the correctional facility classification officer for consideration at the appropriate time intervals. The classification officer will not act unless an inmate submits an application. A review of the inmate's eligibility on restoration shall be made in accordance with this subchapter by the classification officer and forwarded to the Administrator, who shall make the restoration determination.

Example: An inmate commits a disciplinary infraction on June 30, 1987. The sanction imposed includes a forfeiture of 160 commutation credits. The inmate receives no findings of guilty through the disciplinary process between June 30, 1987 and June 30, 1988. The inmate, therefore, has 40 credits restored on June 30, 1988. The inmate is again free of guilty findings from June 30, 1988 through June 30, 1989 and has another 40 credits restored. The inmate is to be paroled on March 30, 1990. Thus, he or she will only serve nine months (or 3/4) of the third year. The Administrator, in his or her discretion, may restore 75 percent of the 40 credits or 30 credits as of March 30, 1990.

(f) The following procedures for restoring forfeited commutation credits apply to all inmates who received guilty findings from charges for prohibited acts which occurred prior to May 24, 1979, except as otherwise set forth in this section:

1. One hundred percent of the forfeited commutation credits may be restored to an inmate(s) during three consecutive years (one-third restoration per year) which the inmate(s) completes without a charge which results in a finding of guilt.

2. Any inmate who feels that he or she meets the qualifications for restoration of commutation credits lost prior to May 24, 1979, must submit an application for restoration of commutation credits to the classification officer of the correctional facility in which the inmate is currently housed. The classification officer will not consider any restoration of forfeited commutation credits lost prior to May 24, 1979, unless an inmate submits an application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

(g) Any inmate under the jurisdiction of the Office of Interstate Services must submit an application for restoration of commutation credits lost to the classification officer of the Office of Interstate Services. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Chief of the Office of Interstate Services who shall make the restoration determination.

(h) Any inmate housed at a residential community release agreement program must submit an application for restoration of commutation credits to the Administrator of the regional correctional facility with responsibility for the inmate. The classification officer of that correctional facility shall review the application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

(i) Any inmate serving a State prison sentence in an adult county correctional facility must submit an application for restoration of commutation credits to the Administrator of the Central Reception and Assignment Facility (CRAF). The classification officer of that facility shall review the application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

Amended by R.1991 d.346, effective July 1, 1991.

See: 23 N.J.R. 1261(a), 23 N.J.R. 2043(a).

Amended to permit an inmate, who has forfeited commutation time as a result of a disciplinary charge and will reach the expiration of his or her maximum sentence in the third year after the loss of commutation time and has been free of disciplinary charges for both the first and second years, to have the commutation credits which he or she could earn in the third year restored, on a prorated basis, at the discretion of the Superintendent.

Amended by R.1992 d.79, effective February 18, 1992.

See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised (a).

Amended by R.1993 d.636, effective December 6, 1993.

See: 25 N.J.R. 4553(a), 25 N.J.R. 5476(a).

Amended by R.1996 d.557, effective December 2, 1996.

See: 28 N.J.R. 4155(a), 28 N.J.R. 5073(b).

Amended by R.1999 d.165, effective May 17, 1999.

See: 31 N.J.R. 708(b), 31 N.J.R. 1335(a).

Rewrote the section.

Amended by R.2001 d.222, effective July 2, 2001.

See: 33 N.J.R. 1043(a), 33 N.J.R. 2297(a).

Inserted a new (b), recodified former (b) as (c), and inserted " , except as otherwise set forth in this section" following "May 24, 1979" in the introductory paragraph; recodified former (c) and (d) as (d) and (e); recodified former (e) as (f) and inserted " , except as otherwise set forth in this section" following "May 24, 1979" in the introductory paragraph; recodified former (f) through (h) as (g) through (i).

10A:9-5.6 Work credits for inmates housed in adult county correctional facilities

(a) State sentenced inmates who are being housed in adult county correctional facilities shall be credited with one day work credit for every five days worked beginning on the 16th day after sentencing. All inmates confined in adult county correctional facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs. Work credits prior to sentencing must be certified by county authorities.

(b) Inmates that are parole violaters without additional charges who are held in an adult county correctional facility on a parole warrant will receive work credits beginning on the 16th day after they have been in custody.