

proceedings are pending which could result in the loss of good-time credits. The prisoner may be so retained in prison for a period no longer than the maximum number of days which might be forfeited as a consequence of his or her misconduct.

ANALYSIS

Penal Code sections 2931-2932¹ provide the present means by which a state prisoner may have his or her maximum determinate term of confinement in prison, imposed by the trial court, reduced by up to one-third by good conduct in prison.² This reduction may be brought about by good behavior (maximum 90 days of credit during any eight-month period) and by participation in work, educational, vocational, therapeutic or other prison activities (maximum 30 days of credit during any eight-month period). All or a part thereof may be lost by serious disciplinary infractions or by failure to participate in available prison programs. (§ 2931, subds. (b) and (c); 15 Cal. Admin. Code §§ 3040-3043.) Behavior and participation credits may be taken away only by the procedure set forth in section 2932. Section 2932, subd. (a)(1), provides:

"The Department of Corrections shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within five days after the discovery of information leading to charges that may result in a possible denial of good behavior or participation credit, but not later than 30 days after the alleged misbehavior took place, unless the evidence was not reasonably discoverable. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at such hearing, and in the case where the prisoner has been notified more than 30 days after the alleged misbehavior why the evidence was not reasonably discoverable within the 30 days or any sooner than it was discovered. Such hearing shall be conducted by an individual who shall be independent of the case and shall take place within 10 days of such written notice; unless for good cause shown by the Department of Corrections that extraordinary circumstances prevented the hearing from being conducted within 10 days and the prisoner is not prejudiced by the delay the Department

¹ Unless otherwise indicated, all further statutory references in this opinion will be to the Penal Code.

² By enactment of Assembly Bill No. 2954 (Stats. 1982, ch. 1234) a new system of credits will be applied to persons who commit crimes after January 1, 1983, and who are sentenced to prison. An inmate in prison for a crime committed before that date may elect to be subject to the new system.

of Corrections shall notify the prisoner in writing specifying the extraordinary circumstances and shall conduct the hearing as soon as possible but in no case later than 30 days after the initial written notice of possible good behavior or participation credit denial."

Section 2932 also provides that the state prisoner confronting a possible loss of credits may elect to use the services of an assigned investigative employee of the Department [subd. (a)(2)], may request that witnesses attend the hearing [subd. (a)(3)], may ask for the assistance of a departmental employee at the hearing [subd. (a)(4)] and may question witnesses [subd. (a)(5)]. If found guilty at the hearing, the prisoner must be advised in writing of this finding, of the evidence relied upon and of the credits lost [subd. (a)(7)]. There are also rights of appeal [subd. (a)(7)].

When a prisoner is initially received in state prison under a determinate sentence he or she is notified of the total amount of behavior and participation credits which may be subtracted from the sentence and is apprised of the "anticipated good-time release date"³ based on eight months of confinement for each year of the sentence, with credit for county jail time if applicable. (§ 2932, subd.(b).)

We are asked whether or not a state prisoner may be held in prison after his or her anticipated good-time release date has expired if prison administrative proceedings or criminal proceedings are pending which might result in the loss of good-time credits. The question may be addressed by illustration. A prisoner arrived in state prison on January 1, 1981, with a determinate sentence of three years and a release date of January 1, 1984. The prisoner was informed that with good behavior and program participation a maximum of twelve months of credit could be earned, resulting in an anticipated good-time release date of January 1, 1983. The prisoner, however, is formally charged on December 27, 1982, with a serious disciplinary infraction, namely, assaulting a prison staff member with a weapon on December 22, 1982. An administrative hearing is set for January 6, 1983; a finding of guilt could result in a maximum loss of 45 days of credit. (§ 2931, subd. (b)(1).) Moreover, the matter is submitted to the district attorney for possible criminal prosecution.⁴ May this prisoner be retained in prison pending disposition of such proceedings or must he be released on January 1, 1983?

³ For example, if a prisoner is sentenced to a term of three years, the minimum determinate term would be two years, i.e., the maximum term of three years less twelve months of possible behavior and participation credits.

⁴ Where the prisoner is prosecuted by the district attorney, the Department of Corrections may not take away credits where he or she is found not guilty but may deny credits if the finding is guilty. (§ 2932, subd. (c).)

The answer to the question is found in section 2932, subd. (d), which states:

"If good behavior or participation credit denial proceedings, or criminal prosecution prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period."

Section 2932, subd. (d), allows the time which a prisoner is held in prison beyond his anticipated good-time release date, by reason of a pending credit denial proceeding or a criminal prosecution, to be deducted from the prisoner's parole period if the prisoner is found not guilty of the charge. In authorizing such deduction, this section strongly implies that retention of the prisoner for purposes of the disposition of such proceeding or prosecution is proper. To interpret the statute otherwise would be to remove all meaning from section 2932, subd. (d), for if the Legislature intended that a prisoner be released unless guilt or innocence of a misconduct charge is finally adjudicated prior to expiration of the anticipated good-time release date, then section 2932, subd. (d), would be surplusage.

The cardinal rule of statutory construction is that the intent of the Legislature be ascertained so as to effectuate the purpose of the law. (*People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 40.) The purposes of the credit system are to encourage prisoners to follow prison rules and to participate in prison programs. As explained in *People v. Austin* (1981) 30 Cal.3d 155, 163:

"In considering the matter of credits, we observed in *People v. Sage*, *supra*, 'language in sections 2930, 2931 and 2932 clearly indicate[s] that the Legislature contemplated the credits governed by these sections would be *earned in prison*.' (26 Cal.3d, at p. 506, italics added.) The primary purposes of conduct credits for prison inmates are to encourage conformity to prison regulations, to provide incentives to refrain from criminal, particularly assaultive, conduct, and to encourage participation in 'rehabilitative' activities. (*People v. Saffell*, *supra*, 25 Cal.3d, at p. 233; *People v. Reynolds* (1981) 116 Cal.App.3d 141, 147 [171 Cal.Rptr. 461].)"

Such purposes would not be well-served by allowing a prisoner to escape sanctions for misbehavior or non-participation by affording immunity from credit forfeiture for his or her actions during the last days or hours of confinement.

Effect should be given to a statute as a whole, and to every word and clause thereof. (*Turner v. Board of Trustees* (1976) 16 Cal.3d 818, 826-827.) Section 2932, subd. (d), expresses a legislative intent that prisoners remain in custody until disposition of those proceedings affecting the length of their terms. Accordingly, we conclude that prisoners may be held in state prison after expiration of their anticipated good-time release dates pending disposition of administrative or criminal proceedings which might affect good-time credits.

We are next asked for our opinion as to the length of time a prisoner may be held in prison after his anticipated good-time release date has expired in order to dispose of pending proceedings affecting good-time credits.

Section 2931 specifies the maximum amount of credits which may be lost for each incident of certain types of misconduct. As examples, assault with a weapon could produce a maximum loss of 45 days of credit; attempted escape might generate a maximum forfeiture of 30 days of credit; destruction of certain property could generate a maximum denial of 15 days of credit. If the prisoner is charged with assault with a weapon, and the credit forfeiture proceedings are not completed within 45 days after expiration of his or her anticipated good-time release date, the prisoner will have experienced the maximum allowable forfeiture for that offense. The prisoner would then become entitled to his or her release from custody since no further loss of credits would be possible for that incident of misbehavior. On the other hand, if a hearing were held and completed within the 45 days and the prisoner were found guilty, the full 45 days, or a part thereof, could be forfeited with allowance made for the time already served beyond the anticipated good-time release date.

Section 2932, subd. (a)(1), sets out rigid procedures for the forfeiture of credits.⁵ Written notice must be given to the prisoner within five days after discovery of the alleged incident of misconduct or not later than 30 days after the incident unless the evidence thereof was not reasonably discoverable earlier. A hearing must be conducted within ten days of the written notice but no later than 30 days after the written notice if extraordinary circumstances exist. Consequently, the Legislature has imposed a duty upon the Department of Corrections to conduct expeditious hearings. These procedures are designed to allow, under ordinary circumstances, for the disposition of charges before the maximum penalties (15, 30 or 45 days loss of credit) are served. Section 2932, subd. (c), permits a prisoner to request a postponement of prison disciplinary proceedings if his or her conduct is referred to criminal authorities for possible prosecution. In such case, "the time limitations specified in subdivision (a) shall not apply." If the prisoner revokes his

⁵ These procedures will be modified on January 1, 1983, by reason of Assembly Bill No. 2954 (Stats. 1982, ch. 1234).

request for postponement, the Department must "hold the hearing within 15 days of the revocation."

A judgment of imprisonment is satisfied when the prisoner has completed his term. (§ 1215; *In re McBride* (1953) 115 Cal.App.2d 538, 543.) Accordingly, a prisoner may not be held in state prison beyond the period of time that might still be forfeited from his or her sentence at a pending proceeding. As stated in *In re Kemper* (1980) 112 Cal.App.3d 434, 438, where a prisoner's parole was suspended while serving a parole period which had been extended because he had not been allowed his earned good-time credits:

"His 'excess' prison time was an accidental injustice, and to say that it should not count in his favor as nonsuspended parole time seems unreasonably harsh. Such an approach also comports with the rules applicable to construction of penal statutes. As noted in *Bowland v. Municipal Court* (1976) 18 Cal.3d 479, at pages 487-488 [134 Cal.Rptr. 630, 556 P.2d 1081]: 'Generally, the provisions of a penal statute "are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.'" (Pen. Code, § 4,; see *People v. Fair* (1967) 254 Cal.App.2d 890, 892. . . .) Where the statute is susceptible to two reasonable constructions, however, a defendant is ordinarily entitled to that construction most favorable to him.' (See also *People v. Boyd* (1979) 24 Cal.3d 285, 295 [155 Cal.Rptr. 367, 594 P.2d 484]; *Hale v. Morgan* (1978) 22 Cal.3d 388, 394 [149 Cal.Rptr. 375, 584 P.2d 512]; *People v. Ross* (1979) 92 Cal.App.3d 391, 403 [154 Cal.Rptr. 783].)

"An analogy supportive of this conclusion is found in Penal Code section 2932, subdivision (d), which credits as nonsuspended parole time the period during which initial release on parole is delayed because of charges of which the prisoner is subsequently found not guilty. No reason is found in logic or justice to distinguish between a delayed initial release on unproved charges, and one caused by subsequent modification of a judgment; both situations involve a delay in release which, retrospectively, was 'undeserved.'"

Consequently, a prisoner who has earned all possible conduct credits, and prison authorities no longer have jurisdiction to take away such credits, must be released when he or she has served the lawful sentence.

Likewise, if a criminal prosecution for prison misconduct is not completed before expiration of the anticipated good-time release date and before the maximum

amount of forfeitable credits have been consumed by excess confinement, the prisoner must be released from prison custody. For example, if the prisoner is facing a criminal prosecution for assault with a weapon such prosecution should be completed and credits forfeited under section 2932, subd. (c), within 45 days after expiration of the anticipated good-time release date. Conceivably, a criminal prosecution might be completed within 45 days after expiration of the anticipated good-time release date.⁶ If not, the prisoner would be entitled to release from prison upon satisfaction of the maximum time which could be forfeited; but he or she would, of course, remain subject to the jurisdiction of the criminal court and confined in jail or released on bail or the equivalent.

Where the prisoner is charged with multiple behavioral and/or non-participation offenses the maximum credit which could be forfeited would be 120 days for offenses within an eight month period. The administrative or criminal proceedings would have to be completed within 120 days after the anticipated good-time release date.

We conclude that a state prisoner who is confined under a determinate sentence for a crime committed prior to January 1, 1983, may be held in state prison after his or her anticipated good-time release date has expired if administrative proceedings or criminal proceedings are pending which could result in the loss of good-time credits. The prisoner may be retained in prison for a period no longer than the maximum number of days which might be forfeited as a consequence of his or her misconduct.

⁶ Absent a showing of good cause or a waiver of time a criminal defendant in a felony prosecution must be brought to trial within 60 days after the finding of the indictment or filing of the information. (§ 1382, subd. (2).) In a misdemeanor case a person in custody must be brought to trial within 30 days after he or she is arraigned. (§ 1382, subd. (3).)