

VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

AW  
2016 DEC -9 P 2:04

CIVIL DIVISION  
Docket No. 476-8-16 Wncv

JASON MEARS  
Plaintiff

FILED

v.

LISA MENARD, Commissioner,  
Vermont Department of Corrections  
Defendant

**DECISION**  
**The State's Motion to Dismiss**

Plaintiff Jason Mears is an inmate in the custody of the Vermont Department of Corrections. His administrative grievance and his Rule 75 complaint can be read in two ways: (1) that he wants to challenge discretionary decisions by the DOC from many years ago about earned reduction of term (ERT), and (2) that he wants to ensure, by viewing the relevant "green sheets," that whatever ERT he earned during that time is properly reflected in his sentence calculation. The DOC, both administratively and here, treats his claim exclusively as a challenge to very old discretionary decisions and seeks dismissal due to untimeliness. It does not address the sentence calculation issue.<sup>1</sup>

The ERT decisions at issue were made sometime between 11 and 15 years ago. Mr. Mears complains that he was never given "green sheets" for the particular months at issue. Green sheets evidently are notices to the inmate about whether or how much ERT was given. Mr. Mears did not, before now, grieve the relevant ERT decisions or failure of the DOC to have given him green sheets. While he claims that he previously asked for them and did not receive them, he does not show that he grieved any failure to give them to him at the time of the decisions 11-15 years ago. The State argues that any disputes over whether ERT should have been granted at times that long ago should have been filed many years ago and that Mr. Mears' claim is now extinguished under the doctrine of laches and the general time constraints of Rule 75(c) (requiring filing within 30 days of an agency's action or 6 months of an agency's inaction).

For the reasons stated in *Batchelder v. Gold*, No. 2003-185, 2004 WL 5582550 (Vt. Apr. 2004), a similar case, permitting review of old discretionary decisions now would prejudice the State. While *Batchelder* is not binding law, its analysis is persuasive and the court adopts it. The claim in which Mr. Mears seeks to revisit 11-15 year old ERT decisions is dismissed.

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<sup>1</sup> Mr. Mears opposes dismissal so his Prisoner's Rights counsel can have more time to evaluate whether to amend the complaint or take the case at all. The court construes the motion as a request for additional time to respond to dismissal rather than an opposition to dismissal per se and denies the request. Nearly two months have elapsed since Mr. Mears filed this request and he has filed nothing since. The State's motion is straightforward. No basis for needing additional time was asserted in the request or is apparent otherwise.

The State has not addressed the sentence calculation issue specifically, but the State's argument that this case was not filed within 30 days of the Commissioner's final decision presumably is relied on by the State. V.R.C.P. 75(c). The final decision of the Commissioner was June 28, 2016. The complaint was filed on August 8, 2016, 38 days later.

The court declines to dismiss this claim on this basis for several reasons. First, the filing periods in Rule 75(c) are not jurisdictional and may be extended. Second, the Commissioner's decision is dated June 28, 2016 but there is no information in the record on when Mr. Mears may have received the decision at the facility in Michigan where he is incarcerated. Thus, it is not clear that the filing in court was beyond 30 days. Third, a claim that sentence credit has not been properly applied to a sentence could have future effect, and could potentially be the basis for a habeas corpus claim.

To summarize, any dispute Mr. Mears seeks to raise over how the DOC exercised its discretion about granting or not granting ERT in the years at issue is dismissed. To the extent that Mr. Mears seeks to challenge whether any ERT that was granted in those years was properly credited against his sentence, the claim may go forward.

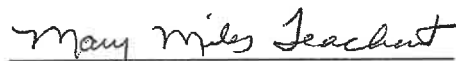
#### ORDER

For the foregoing reasons, the State's motion to dismiss is granted in part and denied in part.

All requests for discovery (information in the possession of the other party) shall be made by January 20, 2017. Mr. Mears is not required to make a new request for the "green sheets," as the record shows no dispute that he has already asked for them. They shall be provided by January 13, 2017.

The deadline for motions is February 10, 2017.

Dated at Montpelier, Vermont this 9<sup>th</sup> day of December 2016.

  
Mary Miles Teachout  
Superior Judge