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SJC-09998

GERALD PIERCE vs. DEPARTMENT OF CORRECTION & another.¹

January 16, 2008.

Supreme Judicial Court, Appeal from order of single justice.
Moot Question. Parole. Practice, Criminal, Sentence, Parole,
Plea.

Gerald Pierce appeals from the denial of his petition pursuant to G. L. c. 211, § 3, by a single justice of this court. We affirm.

Pierce was convicted of a felony and sentenced to imprisonment from eight to ten years. Approximately one year into his sentence, he escaped from a prison camp and was not returned to custody for nearly two decades. Thereafter, he pleaded guilty in the District Court to escape, pursuant to G. L. c. 127, § 83C; was determined to have forfeited certain good time credits pursuant to G. L. c. 127, § 83B; and was given a sentence that ran concurrently with his initial sentence. He was eventually released on parole but left his long-term residential program without returning; he was later recaptured and reincarcerated. Thereafter, he filed a petition for a writ of habeas corpus in the Superior Court, claiming that he was entitled to recovery of his lost good time credits and immediate release, or at least release on parole. He also moved unsuccessfully in the District Court to withdraw his guilty plea on the escape charge.

Thereafter, he filed his G. L. c. 211, § 3, petition, seeking to "remove" the Superior Court habeas action to the county court, and seeking relief from the District Court denial of his motion to withdraw his guilty plea. The single justice denied his petition without a hearing.

¹ Massachusetts Parole Board.

Since Pierce initiated his action in the county court, he has been released from prison and discharged from the custody of the Department of Correction. Accordingly, his claims regarding good time credits and parole have become moot. As for the denial of his motion to withdraw his guilty plea, such matters can generally be addressed on direct appeal. Accordingly, the single justice was correct to deny Pierce relief under G. L. c. 211, § 3. See Semedo v. Commonwealth, 429 Mass. 1006, 1006 (1999) (petitioner not entitled to relief under G. L. c. 211, § 3, from denial of motions to withdraw guilty pleas where he could have appealed directly to Appeals Court).

Judgment affirmed.

Gerald Pierce, pro se.
Eva M. Badway, Assistant Attorney General (David Slade with her) for the defendants.