

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX

O'NEAL MULLEY,

Petitioner,

Civ. No. 2001/034

Ref. Crim. No. 93-127

v.

IRA PHILLIPS, GOVERNMENT OF
THE VIRGIN ISLANDS, et. al.,

Defendants.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER is before the Court on a petition for writ of habeas corpus filed by O'Neal Mulley. ["Petitioner"/"Mulley"]. On December 12, 1993, Mulley was sentenced by this Court to fifteen years imprisonment on a conviction for Aiding and Abetting Robbery First Degree and Aiding and Abetting Assault First Degree, both Virgin Islands charges. Mulley is presently incarcerated at the Golden Grove Adult Correctional Facility on St. Croix. He argues that he is entitled to good time credit and that he is being deprived of such by the Virgin Islands Bureau of Corrections.

Mulley's petition must be dismissed. In *Callwood v. Enos*, 2000 WL 1517674 (3d Cir. 10/13/00), the Third Circuit ruled that a defendant tried and convicted for local crimes in District Court prior to the change of jurisdiction can

bring a habeas pursuant to 28 USC §2241 but must first exhaust¹ state remedies by filing in Territorial Court pursuant to 13 VIC §1303. The *Callwood* court explained that a challenge to the execution of a sentence is best brought pursuant to 28 U.S.C. §2241; however, principles of comity require that a party seeking relief under a territorial court statute be required to exhaust his remedies in Territorial Court before proceeding in the District Court under federal law. *Id.* at

* 6. *Callwood* was challenging the action of the Virgin Islands Board of Parole.

The Court stated,

“The Territorial Court will no doubt be more familiar with the provisions and requirements of the territorial parole statute and should be given an opportunity to provide a remedy, if appropriate, before [the defendant] seeks federal habeas corpus relief. [He] will be free to return to the District Court under §2241, after exhausting any remedy available in Territorial Court.”

Id. In this case, Mulley is challenging the award of good time, pursuant to 5 V.I.C. §4571; thus, his claim must first be brought in the Territorial Court.² That Court must adjudicate and rule on the merits of the petition. If the decision is adverse, he may re-file in the District Court.

Accordingly, it is

¹The term “exhaustion” means that the claim must be presented to every state court in a posture that allows for the court to fully analyze the claim. McCarthy, Greg A., *Federal Habeas Corpus: The Path Through State Court*, 32 Arizona Attorney, 21 (April 1996).

²The court notes that Mulley’s file contains a letter dated February 9, 2000, from Chief Judge Finch addressing the same issue. In that letter, the Chief Judge calculated Mulley’s sentence. However, that computation differs from that of the Bureau of Corrections in some respects.

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ORDERED that the instant petition for writ of habeas corpus is DENIED
WITHOUT PREJUDICE to petitioner refile under 28 U.S.C. § 2241 after
exhaustion.

DATED:

ENTER:

RAYMOND L. FINCH
CHIEF JUDGE

A T T E S T:

Wilfredo F. Morales, Clerk of Court

by: _____
Deputy Clerk

cc: O'Neal Mulley, pro se (Golden Grove ACF)
Denise Hinds, AUSA
Royette Valmond Russell, Esq.