

SUBJECT: Allowing subsequent writ of habeas corpus for a time-served credit error

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Ellis, Denny, Hodge, Talton

0 nays

3 absent — Dunnam, P. Moreno, Pena

WITNESSES: None

BACKGROUND: Convicted felons in Texas may challenge their convictions in two ways: with a direct appeal, which deals only with errors of fact or law in the original trial, and by an application for habeas corpus, which can raise issues outside of the trial record. Applications for habeas corpus typically center on constitutional rights and may be filed in both state and federal court.

Code of Criminal Procedure, art. 11 outlines procedures for habeas corpus and specifies that a writ of habeas corpus is the remedy to be used when a person's liberty is restrained. Art. 11.07, governs procedures for applying for a writ of habeas corpus in a felony conviction where the death penalty was not imposed. It seeks to limit a defendant to one application for a writ of habeas corpus per conviction and does not allow subsequent applications unless:

- the current claims have not been and could not have been presented in an original application or in a previously considered application because the factual or legal basis for the claim was unavailable at the time; or
- by a preponderance of the evidence, but for a violation of the U.S. Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt.

Government Code, sec. 501.0081 requires the Texas Department of Criminal Justice (TDCJ) to develop a dispute resolution system to address inmate allegations that time credited on the inmate's sentence is incorrect. An inmate may not file an application for a writ of habeas corpus based on a time-served

credit error until the inmate receives a written decision from the dispute resolution authority, or, if the inmate does not receive a written decision, until the 180th day after the date on which the inmate first alleged the time-served credit error. However, this restriction does not apply to an inmate who is within 180 days of the inmate's parole date or date of discharge. In that case, an inmate may raise a time-served credit error in an application for a writ of habeas corpus if it is not otherwise barred.

Government Code, chapter 498 addresses the classification of inmates and the calculation of good conduct time. Good conduct time applies only to an inmate's eligibility for parole or mandatory supervision. TDCJ may grant good conduct time to an inmate only if the inmate is engaged actively in an agricultural, vocational, or educational endeavor, in an industrial program or other work program, or in a treatment program, unless TDCJ finds that the inmate is not capable of participating in such programs. If an inmate commits an offense or violates a TDCJ rule during imprisonment, TDCJ may eliminate all or any part of the inmate's accrued good time.

DIGEST: HB 32 would allow a defendant to make a subsequent application for a writ of habeas corpus if the application was based solely on a claim of a time-served credit error. It would remove the language under Government Code, sec. 501.0081 specifying that an inmate may raise a claim of time-served credit error through an application for a writ of habeas corpus only if that application is not otherwise barred.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY: HB 32 would allow a convicted felon to file an additional application for a writ of habeas corpus to contest a time-served credit error, which is both fair and practical.

The Texas Court of Criminal Appeals, in *Ex parte Whiteside*, 12 S.W.3d 819 (2000), held that a subsequent application for a writ of habeas corpus based on time-served credit error is barred unless it meets one of the conditions in Code of Criminal Procedure, art. 11.07. However, in a concurring opinion by Justice Johnson, the court noted that the Legislature possibly did not realize

the unfairness of preventing subsequent applications based solely on time-served credit error. The concurring opinion strongly encouraged the Legislature to correct this inequity.

It is impossible for an offender to foresee, when filing a constitutional claim challenging a conviction, that TDCJ will miscalculate the offenders' time-served credit. The credit issue is unique and completely unrelated to habeas corpus claims of constitutional issues and of whether or not the conviction was legal. It does not make sense to force an offender to combine these arguments in a single application.

HB 32 would limit the state's liability for wrongfully imprisoning an inmate beyond the inmate's lawful discharge date by giving inmates a remedy to correct these errors in the first place. It is unclear whether or not the state could be liable for damages in such cases, but as long as the possibility exists, the state should try to minimize its exposure to liability.

This bill would provide a necessary check and balance to TDCJ, which often makes mistakes when determining an inmate's time-served credit because of the volume of cases, the need for quick determinations, and the outdated system used to calculate time served. TDCJ does not always handle inmates' claims in a speedy and satisfactory manner, and inmates need a recourse outside of TDCJ to ensure a fair hearing. Furthermore, the dispute resolution procedures under Government Code, sec. 501.0081 apply only to claims made after January 1, 2000.

If the number of applications for writs of habeas corpus increases, it would be worthwhile to ensure that inmates are not serving longer sentences than they deserve. Claims of time-served credit errors typically are not frivolous but are the most successful type of writ filed and routinely are granted by courts.

HB 32 would help alleviate prison crowding by ensuring that time served is calculated properly. Time-served credit errors are straightforward, simple claims to address, and they would not consume a great deal of prosecutors' or courts' time. Also, an inmate not within 180 days of release still would have to go through the internal review process, which would continue to resolve many claims without involving the courts.

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**OPPONENTS
SAY:**

HB 32 is not necessary. TDCJ handles claims for time-served credit errors appropriately. This bill would result in involving the courts needlessly.

HB 32 would lead to frivolous applications for writs of habeas corpus. Code of Criminal Procedure, art. 11.07 was designed to limit a convicted person to “one bite at the apple,” and this bill would create a large exception. It is costly and time-consuming for prosecutors and courts to address these claims.

NOTES:

A related bill, HB 1713 by Hodge, would establish procedures for a convicted offender to apply for a writ of habeas corpus seeking relief from an order or judgment of community supervision. HB 1713 was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on March 18.