

SUPREME COURT OF ARKANSAS

Calvin Perry and Marcus Atkins v. Dexter Payne, Director, Arkansas
Division of Correction

2022 Ark. 112 (2022) · No. CV-21-467 · Decided May 26, 2022

SUMMARY

The Arkansas Supreme Court held that Calvin Perry and Marcus Atkins's parole eligibility for fifteen-year firearm enhancements must be calculated under the parole-eligibility law in effect when their offenses were committed in April 2007. Relying on *Rogers v. Arkansas Department of Correction*, the court reversed and remanded with directions to issue a writ of mandamus requiring the Arkansas Division of Correction to recalculate eligibility. The court also held that sovereign immunity did not bar the action because the defense was not raised below, while Justice Womack dissented on that issue.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Baker, Justice; Wynne, Justice; Womack, Justice
JURISDICTION	Arkansas
DECIDED	May 26, 2022
DOCKET	CV-21-467
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Jefferson County Circuit Court's denial of a petition for declaratory judgment, writ of mandamus, and injunctive relief challenging the Arkansas Division of Correction's calculation of parole eligibility.
STANDARD OF REVIEW	Not expressly stated; the court reviewed the denial of mandamus and declaratory relief and applied the governing parole-eligibility statutes as a matter of law.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Calvin Perry, Marcus Atkins v. Dexter Payne, Director, Arkansas Division of Correction

TOPICS

- statutory interpretation
- administrative law
- judicial review of agency action
- remedies
- constitutional law

PRACTICE AREAS

administrative law

constitutional law

criminal sentencing

mandamus

parole eligibility

QUESTIONS PRESENTED

1. Whether the Arkansas Division of Correction improperly applied the post-July 2, 2007 parole-eligibility provision requiring service of 70 percent of a firearm enhancement to offenses committed in April 2007.
2. Whether the circuit court had jurisdiction to issue a writ of mandamus directing the Division of Correction to recalculate parole eligibility despite Arkansas constitutional sovereign immunity.
3. Whether sovereign immunity barred the mandamus action when the State did not raise immunity below and conceded that mandamus should issue.

HOLDINGS

1. Parole eligibility for a firearm enhancement must be determined under the law in effect when the underlying offense was committed. Because Perry and Atkins committed their offenses in April 2007, their enhancements were governed by Arkansas Code Annotated section 16-93-1301 (Supp. 2005), which treated them as unclassified felonies eligible for parole after the applicable one-half or one-third period, rather than by the later 70-percent requirement.
2. The circuit court should issue a writ of mandamus directing the Arkansas Division of Correction to calculate Perry's and Atkins's parole eligibility consistently with section 16-93-1301 and the court's opinion.
3. Sovereign immunity is treated as an affirmative defense that must be raised below, and it did not bar this mandamus action because the State failed to raise the defense and conceded that mandamus should issue. Sovereign immunity also did not deprive the courts of subject-matter jurisdiction over mandamus.

KEY QUOTATIONS

"We held the enhancement was subject to the parole-eligibility law in place when the offense was committed."
(at 2)

"We therefore treat sovereign immunity like an affirmative defense that a party must first raise below." (at 3)

"And sovereign immunity doesn't deprive courts of their jurisdiction over the subject matter of mandamus."
(at 3)

FACTUAL BACKGROUND

In April 2007, Calvin Perry and Marcus Atkins committed offenses involving kidnapping, battery, firearms, and the presence of a minor. They received consecutive fifteen-year firearm enhancements under Arkansas Code Annotated section 16-90-120. The Arkansas Division of Correction calculated their parole eligibility by requiring them to serve 70 percent of the enhancement sentences, although the crimes occurred before the effective date of the statutory provision imposing that requirement.

PROCEDURAL HISTORY

Perry and Atkins petitioned the Jefferson County Circuit Court, arguing that the Arkansas Division of Correction improperly required them to serve 70 percent of their fifteen-year firearm-enhancement sentences before becoming eligible for parole. The circuit court denied the petition after a hearing in June 2021. They appealed, and the State conceded error based on the Supreme Court of Arkansas's intervening decision in *Rogers v. Arkansas Department of Correction*.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to issue the writ of mandamus and order the Arkansas Division of Correction to calculate Perry's and Atkins's parole eligibility for their firearm enhancements consistently with Arkansas Code Annotated section 16-93-1301 and the opinion.

CASES CITED

- *Watkins v. State*, 2009 Ark. App. 124, 302 S.W.3d 635
- *Rogers v. Arkansas Department of Correction*, 2022 Ark. 19, 638 S.W.3d 265
- *Walther v. FLIS Enterprises, Inc.*, 2018 Ark. 64, 540 S.W.3d 264
- *Rutledge v. Remmel*, 2022 Ark. 86
- *Chesshir v. Copeland*, 182 Ark. 425, 32 S.W.2d 301 (1930)
- *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778
- *Wilson v. Arkansas Department of Human Services*, 2018 Ark. 358, 562 S.W.3d 201
- *Thurston v. League of Women Voters of Arkansas*, 2022 Ark. 32, 639 S.W.3d 319
- *Board of Trustees of the University of Arkansas v. Andrews*, 2018 Ark. 12, 535 S.W.3d 616