

² See Case No. ST-04-CR-96.

A motion for reduction of sentence is “a plea for leniency addressed to the sound discretion of the court.”³ The motion may be denied “for virtually any reason or for no reason,”⁴ and the decision “will not be overturned absent gross abuse of discretion.”⁵

When making a determination on a motion for sentence reduction, “the Court is guided by the goals of the criminal justice system, the purposes for imprisonment, and the reasons specified in the [d]efendant's motion.”⁶ The Court examines “the appropriateness of a sentence, its length within the limits established by the legislature, and its ability to meet the aforementioned goals.”⁷ The “nature of a [d]efendant's criminal conduct and an assessment of the harm caused by the defendant are legitimate concerns to be considered by the Court, when considering a motion for reduction of a sentence.”⁸

The basis for Petitioner's motion for sentence reduction is that he has undergone a religious conversion, has not been charged with bad conduct during the eight years preceding his February 9, 2015 motion, and has enrolled in anger management and GED classes.

Petitioner appears to be making steps in the right direction to change his life for the better. The Court commends him for his efforts and urges him to continue on this path.

³ *Gov't of the V.I. v. Charles*, 2005 V.I. LEXIS 11, *5-11, 47 V.I. 160, 164-167 (V.I. Super. Ct. 2005) (citing *Government of Virgin Islands v. Santiago*, 27 V.I. 232, 233, 798 F. Supp. 274 (D.C.V.I. 1992); *United States v. Glantz*, 884 F.2d 1483, 1487 (1st Cir. 1989)).

⁴ *Charles*, 2005 V.I. LEXIS 11, *5-11, 47 V.I. 160, 164-167 (citing 3 Charles Alan Wright, *Federal Practice and Procedure* § 586 (1982); *United States v. Smith*, 964 F.2d 885, 887 (9th Cir. 1992); *United States v. Townsend*, 98 F.3d 510 (9th Cir. 1996)).

⁵ *Charles*, 2005 V.I. LEXIS 11, *5-11, 47 V.I. 160, 164-167 (citing *United States v. Glantz*, 884 F.2d 1483, 1487 (1st Cir. 1989)).

⁶ *Gov't of the V.I. v. Charles*, 2005 V.I. LEXIS 11, *5-11, 47 V.I. 160, 164-167 (V.I. Super. Ct. 2005).

⁷ *Id.*

⁸ *Id.* (citing *Payne v. Tennessee*, 501 U.S. 808 (1991); *United States v. Zakhor*, 58 F.3d 464, 466 (9th Cir. 1995)).

The Court is also mindful that Petitioner caused the deaths of two men and that there were valid reasons for his sentence. In addition, Petitioner already received significant leniency when this Court sentenced him to concurrent sentences of 25 years instead of consecutive sentences. Based on the foregoing, the Court will deny Petitioner's motion for reduction of sentence.

b) Amended Petition for Writ of Habeas Corpus

Section 3 of the Revised Organic Act of 1954 provides that "[a]ll persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided."⁹ In addition, the Virgin Islands Legislature "enacted chapter 91 of title 5 of the Virgin Islands Code [to] establish a procedure for seeking habeas corpus relief under Virgin Islands law, [which] codifies the right to habeas corpus and explains the process through which it can be obtained."¹⁰ Under the statute, "every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."¹¹ The statute also establishes the following "circumstances under which a petitioner may be discharged from custody":

- (1) When the jurisdiction of such court or officer has been exceeded.
- (2) When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge.
- (3) When the process is defective in some matter of substance required by law rendering such process void.
- (4) When the process, though proper in form, has been issued in a case not allowed by law.

⁹ 48 U.S.C. § 1561.

¹⁰ *Rivera-Moreno v. Government of the Virgin Islands*, 61 V.I. 279, 293-294, 2014 V.I. Supreme LEXIS 46, *13-15 (VI. 2014) (citing 5 V.I.C. §§ 1301-25).

¹¹ *Id.*

- (5) When the person having custody of the prisoner is not the person allowed by law to detain him.
- (6) Where the process is not authorized by any order, judgment or decree of any court, nor by any provision of law.
- (7) Where a party has been committed on a criminal charge without reasonable or probable cause.¹²

Discharge from custody is not a petitioner's only remedy, however. "The habeas corpus statute recognizes that an incarcerated individual may not be entitled to immediate discharge from custody, yet may still be unlawfully imprisoned and entitled to relief."¹³

"When presented with a petition for a writ of habeas corpus, [the Superior Court] must first determine whether the petition states a *prima facie* case for relief — that is, whether it states facts that, if true, entitle the petitioner to relief — and also whether the stated claims are for any reason procedurally barred."¹⁴ "If the court determines that the petition does not state a *prima facie* case for relief or that the claims are all procedurally barred, the court will deny the petition outright," but "if it appears that the writ ought to issue," the Superior Court "shall grant [a writ of habeas corpus] without delay."¹⁵

Petitioner asserts that, while he was imprisoned at Golden Grove on St. Croix, he had a "medium level custody classification" and was employed at the Golden Grove Prison Farm. Petitioner alleges that he was terminated from his employment at the farm without a due process hearing, and, when he filed a grievance, he was transferred to Wallens Ridge "Maximum Security" State Prison in Virginia as an act of retaliation by Prison Director Julius Wilson. Petitioner contends that the transfer has hampered his ability to visit with

¹² *Rivera-Moreno*, 61 V.I. at 293-294 (citing 5 V.I.C. § 1314).

¹³ *Rivera-Moreno*, 61 V.I. at 295.

¹⁴ *Rivera-Moreno*, 61 V.I. at 311, (citing *People v. Romero*, 883 P.2d 388, 391 (1994) (explaining the habeas corpus procedure under California's nearly identical statutes)).

¹⁵ *Rivera-Moreno*, 61 V.I. at 311 (citing 5 V.I.C. § 1304).

his family, conduct legal research to contest his confinement, and participate in vocational programs. Petitioner also alleges that his shackles during his transfer from St. Croix to Virginia were “severely tight” causing cuts to his wrists in violation of his Eighth Amendment rights under the U.S. Constitution.

“Generally, habeas corpus relief is available only to address the fact or duration of an inmate's confinement, not the conditions of that confinement.”¹⁶ In the Virgin Islands, however, a petitioner may raise an Eighth Amendment challenge in a habeas petition.¹⁷

The Eighth Amendment establishes that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” When raising an Eighth Amendment challenge to conditions of confinement, a prisoner must demonstrate “a sufficiently serious objective deprivation, and that a prison official subjectively acted with a sufficiently culpable state of mind, i.e., deliberate indifference.”¹⁸ The Court notes that “not every governmental action affecting the interests or well-being of a prisoner is subject to Eighth Amendment scrutiny. After incarceration, only the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment.”¹⁹

While Petitioner asserts that his shackles were too tight, he has not made any allegations suggesting that a prison official knew of, and deliberately ignored, his

¹⁶ *Maxwell v. Stridiron*, 2003 V.I. LEXIS 6, *7-9, 45 V.I. 185, 190-191, 2003 WL 1936135 (V.I. Terr. Ct. 2003) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841, 36 L. Ed. 2d 439 (1973)).

¹⁷ See *Joseph v. de Castro*, 27 V.I. 297, 301-302, 805 F. Supp. 1242, 1246 (D.V.I. App. Div. 1992) (superceded by statute on other grounds, *Parrott*, 43 V.I. 277, 230 F.3d 615; *Ali v. Gibson*, 483 F. Supp. 1102, 16 V.I. 426, 449 (D.V.I. 1979) (cruel and unusual punishment as basis for habeas relief).

¹⁸ *Tillman v. Lebanon County Corr. Facility*, 221 F.3d 410, 418 (3d Cir. 2000).

¹⁹ *Fuentes v. Wagner*, 206 F.3d 335, 344 (3d Cir. 2000).

discomfort. As a result, Petitioner has failed to properly allege an Eighth Amendment claim, and this claim will be denied.

Turning to Petitioner's retaliation claim, it is evident that Petitioner has pled a civil rights claim under 42 U.S.C. § 1983.²⁰ Actions "challenging the conditions of confinement reside more in the heartland of civil actions under 42 U.S.C. § 1983."²¹ While courts are generally obliged to entertain § 1983 claims,²² courts are not required to construe a habeas petition as a § 1983 action.²³ Petitioner is advised that if he wishes "to pursue a § 1983 claim for violation of his civil rights ..., he must do so in a separate civil rights proceeding."²⁴ As a result, Petitioner's retaliation claim will be dismissed without prejudice.²⁵

²⁰ 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

²¹ *Kane v. Winn*, 319 F. Supp. 2d 162, 213, 2004 U.S. Dist. LEXIS 10027, *140 (D. Mass. 2004).

²² See, e.g., *Howlett v. Rose*, 496 U.S. 356, 369 (1990) (the Supreme Court found that a state court could not refuse to entertain a section 1983 claim on the ground that it was barred by the defense of sovereign immunity, stating that "A state court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a 'valid excuse'").

²³ See, e.g., *Aponte v. Cal. Dep't of Corr.*, 2003 U.S. Dist. LEXIS 23420, *1-3, 2003 WL 23119275 (N.D. Cal. Dec. 22, 2003); see also *Allen v. McCurry*, 449 U.S. 90, 104 (U.S. 1980) (commenting on the "continuing illogic of treating federal habeas and § 1983 suits as fungible remedies for constitutional violations").

²⁴ *Hyder v. Quarterman*, 2007 U.S. Dist. LEXIS 89388, *10, 2007 WL 4300442 (S.D. Tex. Dec. 5, 2007).

²⁵ See *Kane*, 319 F. Supp. 2d at 213 (various courts have "have dismissed habeas petitions (or individual claims contained therein) that challenged conditions of confinement rather than the fact or duration of confinement"). See also *Melhem v. Farquharson*, 2003 U.S. Dist. LEXIS 10150, Civ. A. No. 03-10721-DPW, 2003 WL 21397987, at *1 n.1 (D. Mass. June 17, 2003); *Do Vale v. I.N.S.*, 2002 U.S. Dist. LEXIS 12595, Nos. 01-216-ML, 01-507-ML, 2002 WL 1455347, at *9 (D.R.I. June 25, 2002); *Barnes v. I.N.S.*, 2001 U.S. Dist. LEXIS 13620, Civ. No. 01-48-PC, 2001 WL 1006077, at *7 (D. Me. Aug. 30, 2001); *Kamara v. Farquharson*, 2 F. Supp. 2d 81, 89 (D. Mass. 1998); *Hyder v. Quarterman*, 2007 U.S. Dist. LEXIS 89388, *10, 2007 WL 4300442 (S.D. Tex. Dec. 5, 2007).

An Order consistent with this Opinion shall follow.

Dated: August 12, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
DATE: Aug. 16, 2016
ESTRELLA H. GEORGE
Acting Clerk of the Court

By:


Camell A. Clarke
Court Clerk II