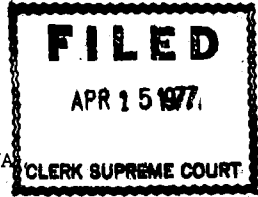


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IN THE COURT OF APPEALS OF IOWA

HARVEY BUNKER,	)	
Appellant,	)	Filed April 15, 1977
v.	)	
LOU BREWER,	)	
Appellee.	)	$\begin{array}{r} 96 \\ 2-59616 \end{array}$

Appeal from Linn District Court - Robert Osmundson, Judge.

Postconviction relief applicant appeals from order denying him good time credit against his sentence for time spent under probation supervision. Affirmed.

Gary M. Poetting, of Cedar Rapids, for appellant.

Richard C. Turner, Attorney General, Thomas D. McGrane, Assistant Attorney General, and Eugene J. Kopecky, Linn County Attorney, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

CARTER, J.

Appellant Harvey Bunker, a postconviction applicant, appeals a summary judgment granted against him in the trial court.

On October 21, 1971, Bunker was convicted of the crime of breaking and entering and sentenced to serve not more than ten years at the Men's Reformatory at Anamosa. The sentence was suspended and Bunker was placed on probation. Bunker's probation was revoked on April 18, 1975, and he was ordered to serve the sentence imposed. He is presently incarcerated at the Iowa State Penitentiary at Fort Madison.

On January 1, 1976, Bunker filed an application for post-conviction relief, urging that section 247.12, The Code; the equal protection clause of the 14th amendment to the United States Constitution; and similar provisions of the Iowa Constitution, require that time he spent on probation be allowed as a "good time" credit against his sentence. Both parties moved for summary judgment on the issue in the trial court. Without hearing, the court granted the State's motion for summary judgment and denied Bunker's motion.

On appeal to this court, Bunker restates the claim of his postconviction petition. In addition, he assigns as error the trial court's failure to provide a hearing on his motion for summary judgment prior to making its decision. We affirm the trial court.

I. Statutory construction. In 1972, by Acts 1972 (64 G.A.) chapter 1055, § 1, the legislature amended and rewrote section 247.12 to read, in pertinent part,

"The time when a prisoner is on parole from the institution shall be held to apply upon the sentence against the parolee even if the parole is subsequently revoked. . ."

We cannot agree with Bunker's contention that the intent of the legislature as well as statutory construction require a finding that the term "parole" in section 247.12 includes probation within its meaning. It is clear from Acts 1963 (60 G.A.) chapter 159, that the legislature intended to formally distinguish the terms parole and probation in chapter 247. The 1972 amendment to section 247.12 refers to parole only. The intention of the legislature is to be found in what is said in the statute as opposed to what might have been said. *State v. Vietor*, 208 N.W.2d 894, 898 (Iowa 1973). And, when the legislature does not define terms, they must be construed according to their approved usage. *State Ex rel. Turner v. Drake*, 242 N.W.2d 707, 709 (Iowa 1976). In these circumstances we can only conclude that section 247.12 can not be construed so as to provide "good time" credit for time on probation.

II. Equal protection. Nor do we find merit in the appellant's alternative claim that our construction of section 247.12 violates the equal protection clause of the 14th amendment to the United States Constitution, or Art. I, section 6 of the Iowa Constitution. The limitations which the two constitutional provisions place on state legislation are substantially the same. *City of Waterloo v. Selden*, ___ N.W.2d ___, (filed March 16, 1977). To prevail in his constitutional challenge to the legislative classification contained in the statute, Bunker must negate every reasonable basis which may support the act. *City of Waterloo v. Seldon*, *supra*. He attempts to do this by citing numerous situations in which parolees and probationers are treated similarly under the law, thus arguing that it is irrational to not treat them similarly with respect to good time credit. We believe, however, that there is a sufficient distinction

between those persons convicted of crimes who have actually served time in prison and those who have not served time in prison to warrant a finding of rational legislative purpose in distinguishing between the two categories of persons in the particular instance with which we are concerned. Once this rational legislative purpose is found to exist the line of demarcation for application of the legislation is a matter of legislative discretion. Ibid.

III. Finally, we find no merit in Bunker's claim that the failure of the trial court to hold a hearing on the motions for summary judgment requires reversal. We need not determine whether under rules 237 and 238, Rules of Civil Procedure, the trial court is required to hold a hearing in all instances where there is no claim that a factual dispute exists. We believe that generally hearings should be accorded on issues of law as well as on issues of fact. Compare *Bass v. Iowa Public Service Co.*, 184 N.W.2d 691 (Iowa 1971), with *Parrish v. Howard*, 459 F.2d 616, 620 (8th Cir. 1972). Even if we assume, arguendo, that a hearing was required, the failure to hold the hearing on the issues presented is not ground for reversal. Bunker has now had a full appellate review of the legal claims involved; these claims have been resolved in a manner which preclude his claim for postconviction relief; and to now remand for a hearing would be a useless gesture.

AFFIRMED.