Circuit Court for Baltimore City
Case No. 24C17004201

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 160

September Term, 2020

SHAWNTA PURNELL

v.

ROBERT GREEN, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Fader, C.J.,
Shaw Geter,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: August 19, 2021

In 1997, Shawnta Purnell, the appellant, was sentenced to a term of life imprisonment, with all but 55 years suspended, for murder and related offenses. In August 2019, he filed a petition for writ of habeas corpus against the appellee, Robert Green, Secretary of the Department of Public Safety and Correctional Services (the "Department"), in which Mr. Purnell contended that the Department had failed to award him diminution credits to which he was entitled and, as a result, had miscalculated the length of the sentence that he had left to serve. At the time Mr. Purnell filed his motion, the Department calculated Mr. Purnell's projected mandatory supervised release date as falling in July 2039. According to Mr. Purnell, he was entitled to as many as 1,000 additional diminution credits, which, if awarded, would advance his projected mandatory supervised release date to approximately October 2036.

The Department argued that the court could not entertain Mr. Purnell's petition for two reasons: (1) Mr. Purnell did not allege an entitlement to immediate release, which the Department contended was a prerequisite to the availability of habeas corpus relief; and (2) Mr. Purnell had not exhausted available administrative remedies. The circuit court agreed with the Department's first contention and so denied the petition for lack of standing.

Without determining whether habeas corpus relief is available to Mr. Purnell, we will vacate the circuit court's order and remand this action to the circuit court to determine whether Mr. Purnell has an available administrative remedy. That is because, even if Mr. Purnell is correct that habeas corpus relief is available to challenge the Department's current calculation of a future projected release date, a petitioner bringing such a claim who

has an available administrative remedy before the Inmate Grievance Office ("IGO") must exhaust that remedy before filing a petition for a writ of habeas corpus. If the circuit court concludes that Mr. Purnell has an adequate and available remedy before the IGO, it must dismiss the petition. If not, the court should rule again on the availability of habeas corpus relief for Mr. Purnell, which will then be ripe for consideration on appeal.

BACKGROUND

Overview of Diminution Credits

We begin with an overview of how an inmate's term of confinement is determined and the way in which diminution credits are available to reduce that term. An inmate's term of confinement is the length of a single sentence or, for multiple sentences, "the period from the first day of the sentence that begins first through the last day of the sentence that ends last[.]" Md. Code Ann., Corr. Servs. § 3-701 (2017 Repl.; 2020 Supp.). The "maximum expiration date" of a term of confinement is the date that the term expires. *Wilson v. Simms*, 157 Md. App. 82, 87 (2004); *see also* COMAR 12.02.06.01(B)(12).

Pursuant to § 3-702(a) of the Correctional Services Article, with exceptions not relevant here, an inmate committed to the custody of the State's Commissioner of Correction "is entitled to a diminution of the inmate's term of confinement" through the award of diminution credits. Each diminution credit provides a "day-for-day reduction of an inmate's term of confinement," COMAR 12.02.06.01(B)(4), thus providing an inmate the opportunity "to be released on a date much sooner than that designated by [the inmate's] original term of confinement," *Frost v. State*, 336 Md. 125, 128 (1994). Once an inmate serving a term of confinement of more than 18 months has "served the term or terms, less

diminution credit awarded," the inmate is entitled to release on mandatory supervision, which is "a conditional release from confinement." *Smith v. State*, 140 Md. App. 445, 451 (2001) (quoting Corr. Servs. § 7-501(a)); *see also* COMAR 12.02.06.01(B)(10). The mandatory supervision release date is "computed by subtracting the [inmate's diminution] credits . . . from the maximum expiration date." COMAR 12.02.06.01(B)(11); *accord Wilson*, 157 Md. App. at 87.

Four types of diminution credits are available to inmates committed to the Commissioner's custody: (1) good conduct credits, which are awarded in advance based on the length of an inmate's sentence; (2) work tasks credits, which are awarded based on an inmate's "satisfactory performance of assigned work tasks"; (3) education credits, which may be awarded for "satisfactory progress in or completion of" various types of education courses, trainings, or therapy; and (4) special projects credits, which may be awarded for "satisfactory progress in [certain] special selected work projects or other special programs[.]"[1] Corr. Servs. §§ 3-702 – 3-707. At the time of sentencing, an inmate serving a sentence for a crime of violence is credited with five good conduct credits per

[1] All four types of diminution credits are awarded as day-for-day reduction credits, generally calculated on a monthly basis. *See* Corr. Servs. §§ 3-704 – 3-707; COMAR 12.02.06.01(B)(4). Work tasks, education, and special projects credits are calculated monthly as they are earned, from the first day that the inmate performs the task or project, and on a prorated basis for any part of that month during which the inmate performs the task or project. *See* Corr. Servs. § 3-705(a)(2) (work tasks credits); *id.* § 3-706(b) (education credits); *id.* § 3-707(b) (special projects credits). Good conduct credits, which "are a behavioral incentive and a means of reducing prison overcrowding," *Stouffer v. Staton*, 152 Md. App. 586, 592 (2003), are applied in advance from the term of confinement and, as relevant here, accrue at a rate of five days per month for inmates serving sentences for violent crimes, Corr. Servs. § 3-704(a), (b).

month of sentence imposed. *Id.* § 3-704. Subject to an aggregate limit of 20 diminution credits per month, such an inmate may then also earn up to five work tasks credits, five education credits, and ten special project credits per month.[2] *Id.* §§ 3-704 – 3-708. Good conduct and special projects credits, unlike work tasks and education credits, are subject to revocation for violations of "the applicable rules of discipline," but they may also later be restored. *Id.* § 3-709.

Factual Background

On November 5, 1997, Mr. Purnell pleaded guilty in the Circuit Court for Baltimore City to three counts of first-degree murder, one count of attempted murder, three counts of conspiracy to commit murder, and one count of use of a handgun in a crime of violence. On July 12, 1999, he was sentenced to seven concurrent life sentences, each with all but 55 years suspended. The court also imposed a concurrent 20-year sentence for the handgun offense. The start date for all the sentences was November 8, 1996, which established a maximum expiration date of November 8, 2051.

Based on his pre-sentencing confinement, at the time of sentencing, Mr. Purnell had already been credited with 161 good conduct credits, 161 work tasks credits, and 161 special projects credits. He was also credited with 3,139 good conduct credits for the period from his sentencing through the maximum expiration date. Based on those diminution credits, Mr. Purnell's anticipated mandatory supervised release date immediately after he was sentenced would have been in December 2041.

[2] Different category and aggregate limits may apply to inmates serving sentences for nonviolent crimes. *See* Corr. Servs. §§ 3-704 – 3-708.

In 2000, Mr. Purnell was transferred to a Florida correctional facility pursuant to the Interstate Corrections Compact ("ICC"), Md. Code Ann., Corr. Servs. §§ 8-601 – 8-611.[3] In 2002, he was transferred to a correctional facility in Virginia, where he was serving his sentence when he initiated this action.

The Petition for Writ of Habeas Corpus

In August 2019, Mr. Purnell filed a petition for writ of habeas corpus.[4] In the petition, Mr. Purnell alleged that he had been "unlawfully confined or restrained" in violation of the Maryland and federal constitutions because of an improper calculation of his diminution credits. He alleged that while incarcerated in Virginia pursuant to the ICC, he did not have an equal "opportunity to earn diminution credits as similarly situated inmates who serve their term of confinement in a Maryland correctional institution." Mr. Purnell alleged the following discrepancies:

[3] Maryland is a party to the ICC, under which a member state may contract with other member states for the confinement of inmates. *See* Corr. Servs. § 8-604. Virginia and Florida are also member states of the ICC. *See* Va. Code Ann. §§ 53.1-216 – 53.1-217; Fla. Stat. Ann. §§ 941.55 – 941.57. Notwithstanding his incarceration in Virginia and Florida, Mr. Purnell's commitment has at all relevant times been to the custody of Maryland's Commissioner of Correction. *See* Corr. Servs. § 8-605(c) ("Inmates confined in an institution pursuant to the terms of [the ICC] shall at all times be subject to the jurisdiction of the sending state[.]").

[4] Mr. Purnell, originally acting pro se, initiated this action in 2017 by filing a document titled as a writ of mandamus. In May 2019, the circuit court issued an order directing Mr. Purnell to amend the pleading and file it as a petition for writ of habeas corpus. Mr. Purnell, through counsel, subsequently filed a document titled "Amended Petition for Writ of Habeas Corpus," which became the operative pleading.

- From November 6, 2002 through January 9, 2006, he was deprived "of up to 38 months" of work tasks credits, education credits, or special projects credits despite participating in qualifying activities.

- From October 23, 2014 through August 21, 2016, he earned but was not awarded nearly 22 months of work tasks credits, education credits, or special projects credits that previously had been revoked because of a disciplinary violation that was later overturned.

- From July 31, 2017 through June 30, 2019, he was deprived of "20 months of 5 'special projects credits' each month" "because the title of his work assignment ('Showerman') [in Virginia] does not appear in the listing of work details in Maryland correctional facilities approved for special project credits." This resulted in unequal treatment because the skill level of that assignment "corresponds to the skill level" for similar assignments in Maryland that are approved for such credits.

Crediting Mr. Purnell's allegations fully, the maximum possible number of diminution credits at issue as of the time he filed his petition was 1,000, or approximately 2.74 years' worth of credits.[5]

Mr. Purnell alleged that "[b]ut for this disparate treatment, [he] would have an earlier release date." He asked the court to issue a writ of habeas corpus, "award him the disputed diminution credits," and "adjust his term of confinement." The petition did not include any allegations concerning whether Mr. Purnell had sought or received administrative relief prior to filing, nor did Mr. Purnell allege that his requested relief

[5] At a rate of five work tasks credits, five education credits, and five special projects credits per month, Mr. Purnell could have earned a maximum of 900 additional credits during the 60 months covered by the first two periods. The five additional special projects credits per month Mr. Purnell alleges he was entitled to receive for 20 months in 2017, 2018, and 2019 would have added an additional 100 credits, for a total of 1,000. Although Mr. Purnell would presumably claim he should have continued to earn additional special projects credits in and after July 2019, the amount of such credits would not affect our analysis.

would entitle him to immediate release from confinement or result in his having served the legal portion of his sentence.

In response to the petition, the Department asserted that Mr. Purnell had "failed to allege or establish that he ha[d] earned a sufficient number of diminution credits to entitle him to immediate release from custody[.]" The Department stated that it had reviewed Mr. Purnell's file, determined that he was entitled to a net increase of 18 credits, and adjusted his number of diminution credits accordingly. With that adjustment, the Department calculated that Mr. Purnell's new mandatory supervised release date was June 20, 2039. Because that release date "is still nearly twenty years away," the Department argued that Mr. Purnell remains lawfully incarcerated. In the alternative, the Department argued that the court should dismiss the petition because Mr. Purnell had not alleged that he had filed a complaint with the Inmate Grievance Office or otherwise exhausted available administrative remedies.

After a hearing, the court dismissed Mr. Purnell's petition for lack of standing. In a memorandum opinion, the court concluded that habeas corpus relief was not available to Mr. Purnell because such relief was "limited to circumstances in which the petitioner has served the legal portion of his sentence," which Mr. Purnell had not. The court concluded that Mr. Purnell may petition for a writ of habeas corpus once he "completes the legal portion of his sentence, and not before[.]" Addressing the Department's alternative argument, the court concluded that Mr. Purnell's failure to exhaust administrative remedies was not a barrier to habeas corpus relief under *Maryland House of Correction v. Fields*, 348 Md. 245, 260 (1997), *abrogated on other grounds by Moats v. Scott*, 358 Md. 593

(2000)). The court acknowledged that certain administrative remedies were available to challenge calculation of diminution credits, but made no finding regarding whether such remedies were available to Mr. Purnell or, if so, whether he had exhausted them. Mr. Purnell then filed this timely appeal.

DISCUSSION

"We review the denial of an application for habeas corpus relief under the standard set forth in Maryland Rule 8-131(c). We will review the case on both the law and the evidence, and we will not set aside the judgment on the evidence unless clearly erroneous." *Sabisch v. Moyer*, 466 Md. 327, 349 (2019) (quoting *Wilson*, 157 Md. App. at 91). "Questions of law, however, require our non-deferential review. When the trial court's decision involves an interpretation and application of Maryland statutory and case law, this Court must determine whether the trial court's conclusions are legally correct." *Sabisch*, 466 Md. at 349 (quoting *Estate of Zimmerman v. Blatter*, 458 Md. 698, 717-18 (2018)).

This appeal presents questions concerning the availability of habeas corpus relief and the intersection of habeas law with the statutory command that "[a] court may not consider an individual's grievance that is within the jurisdiction of the [IGO] or the Office of Administrative Hearings unless the individual has exhausted the remedies provided in [Subtitle 2 of Title 10 of the Correctional Services Article]." Corr. Servs. § 10-210(a). The question concerning the availability of habeas corpus relief is whether such relief is available to an inmate to challenge the denial of diminution credits that, if awarded, would result in an earlier mandatory supervision release date, but not an entitlement to immediate release. We will not reach the merits of that dispute because we conclude that *if* habeas

corpus relief is available in such a circumstance, an inmate must first exhaust any administrative remedies within the jurisdiction of the IGO, including any available judicial review. Because the circuit court did not determine whether such remedies were available to Mr. Purnell, we will remand this action to that court for further proceedings not inconsistent with this opinion. We will begin our analysis by exploring the prevailing law concerning the availability of habeas corpus relief and the requirement to exhaust administrative remedies.

I. AVAILABILITY OF THE WRIT OF HABEAS CORPUS

A. Availability of Habeas Corpus Relief in Maryland Courts Has Been Limited to Petitioners Who Allege an Entitlement to Immediate Release or to a Proceeding that Could Result in Immediate Release.

"A writ of habeas corpus—meaning 'that you have the body' in Law Latin—is 'employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal[.]'" *Sabisch*, 466 Md. at 330 (quoting "Habeas Corpus," *Black's Law Dictionary*, at 854 (11th ed. 2019)). "A habeas corpus proceeding . . . is a remedy authorized and protected by the Constitution of Maryland." *Fields*, 348 Md. at 260; *see* Md. Const. Art. III, § 55 ("The General Assembly shall pass no Law suspending the privilege of the Writ of Habeas Corpus."). "[T]he right to habeas corpus relief is a judicially-created common law right that is governed by judicial development," which the General Assembly may regulate "consistent with the Maryland Constitution, *i.e.*, without suspending the writ." *Sabisch*, 466 Md. at 370.

Section 3-702(a) of the Courts and Judicial Proceedings Article (2020 Repl.) sets forth who may file for a petition for habeas corpus in a Maryland court:

> A person committed, detained, confined, or restrained from his lawful liberty within the State for any alleged offense or under any color or pretense or any person in his behalf, may petition for the writ of habeas corpus to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into.

A judge must "grant the writ unless[] the judge finds . . . that the individual confined or restrained is not entitled to any relief[.]" Md. Rule 15-303(e)(3); *see* Cts. & Jud. Proc. § 3-702(b).

The writ of habeas corpus in Maryland as it existed in the nineteenth and early twentieth centuries has been described as "exceedingly narrow." *See* Michael A. Millemann, *Collateral Remedies in Criminal Cases in Maryland: An Assessment*, 64 Md. L. Rev. 968, 984 (2005). "Habeas could be used only to challenge a conviction or sentence that was . . . an absolute nullity." *Id*. (citing *In re Glenn*, 54 Md. 572, 608 (1880)). However, starting in the 1930s, as federal courts began recognizing broader habeas remedies, the availability of habeas corpus relief in Maryland began to expand. *See* Millemann, *supra*, at 985-88. Nonetheless, in a series of cases in the 1950s, the Court of Appeals confirmed that habeas corpus relief was available only to petitioners who had already served the full legal portion of their sentence and alleged an entitlement to immediate release. *See, e.g.*, *Fincher v. Warden of Maryland House of Corr.*, 216 Md. 644, 644-46 (1958) (holding that the "remedy [of habeas corpus] is not available until the entire legal portion of an applicant's confinement has been served"); *Roberts v. Warden of Maryland Penitentiary*, 206 Md. 246, 254-55 (1955) (holding that a petitioner who

contended that his sentences exceeded the maximum penalties available for his convictions could not seek habeas corpus relief until he had served the period that was permissible); *Hunter v. Warden, Maryland Penitentiary*, 198 Md. 655, 655-56 (1951) (holding that a petitioner who was being detained pursuant to a lawful sentence was "not entitled to a writ of habeas corpus to determine the validity of" a different sentence).

In subsequent cases, the Court of Appeals expanded the availability of the Great Writ to cases in which a petitioner sought relief that would not entitle the petitioner to immediate release, but pursuant to which immediate release was possible. In *Gluckstern v. Sutton*, the Court permitted a petitioner to seek habeas corpus relief in the form of "the ordering of a new parole hearing." 319 Md. 634, 664 (1990). And in *Lomax v. Warden, Maryland Correctional Training Center*, the Court held that a petitioner could seek similar relief because "there [wa]s a possibility that [the petitioner] would be released on parole" if his challenge were successful on the merits. 356 Md. 569, 575 (1999). Thus, the Court held, "[h]abeas corpus actions may be maintained where the relief available is the ordering of a proceeding or hearing which may lead to the petitioner's release." *Id.*; *see also Maryland Corr. Inst. v. Lee*, 362 Md. 502, 521 (2001) (holding that a petition for habeas corpus was the appropriate mechanism to challenge detention based on the Division of Corrections' alleged failure to correct a commitment record to reflect the sentence pronounced by the trial court); *Pollock v. Patuxent Inst. Bd. of Rev.*, 358 Md. 656, 668 (2000) (holding that a petition for habeas corpus was an appropriate mechanism to obtain judicial review of a prison review board's decision not to renew parole). In such cases, "the court need not choose simply between discharge of the defendant and the denial of all

relief, but may 'tailor relief as justice may require.'" *Lee*, 362 Md. at 518 (quoting *Gluckstern*, 319 Md. at 663).

The Court of Appeals has not further expanded the availability of habeas corpus relief to an individual who does not allege either an entitlement to immediate release or to a proceeding pursuant to which immediate release is possible.

B. Federal Courts Interpreting the Federal Habeas Corpus Statute Permit Petitions for Habeas Corpus Relief in Which the Petitioner Alleges a Right to Speedier, but Not Immediate, Release.

Federal courts interpreting the federal habeas corpus statute, 28 U.S.C. §§ 2241 – 2256, have taken a more expansive view of the availability of habeas corpus relief, at least in some respects. Most notably for present purposes, in *Preiser v. Rodriguez*, the United States Supreme Court determined that the proper mechanism for inmates to bring a challenge based on an alleged deprivation of diminution credits was a petition for a writ of habeas corpus. 411 U.S. 475, 490-91 (1973). The Court determined that such a claim "fell squarely within th[e] traditional scope of habeas corpus" because the inmates "alleged that the deprivation of their good-conduct-time credits was causing or would cause them to be in illegal physical confinement[.]" *Id.* at 487. Notably, although the inmates in *Preiser* did allege an entitlement to immediate release, *id.*, the Court held that a writ of habeas corpus was the exclusive federal remedy available for such a claim regardless of whether an inmate alleged "entitle[ment] to immediate release or a speedier release from . . . imprisonment,"[6] *id.* at 500. The Court based that conclusion on prior cases that it

[6] The underlying dispute in *Preiser* was whether inmates could challenge the deprivation of diminution credits in an action brought pursuant to the federal Civil Rights

determined had "established that habeas corpus relief is not limited to immediate release from illegal custody, but that the writ is available as well to attack future confinement and obtain future releases." *Id.* at 487 (citing *Peyton v. Rowe*, 391 U.S. 54 (1968)). Habeas corpus relief would thus be available under federal law to challenge a failure to restore diminution credits even if the restoration of the credits would "merely shorten[] the length of . . . confinement, rather than require[] immediate discharge from that confinement[.]" *Id.* at 487-88.

Since *Preiser*, federal courts have recognized that "[t]he central focus of the writ of habeas corpus is to provide a remedy for prisoners who are challenging the fact or duration of their physical confinement and are seeking immediate release or a speedier release." *Otey v. Hopkins*, 5 F.3d 1125, 1130 (8th Cir. 1993). Therefore, to the extent that a petitioner is attacking the length of confinement under federal law, "the proper vehicle is a habeas corpus action." *Id.*; *Offet v. Solem*, 823 F.2d 1256, 1257 (8th Cir. 1987) (same). Federal courts have thus considered claims concerning diminution credits that prisoners allege would entitle them to a speedier release as proper habeas corpus claims. *See, e.g.*, *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001) (holding that a petition to

Act of 1871, 42 U.S.C. § 1983. *Preiser*, 411 U.S. at 476-77. In determining that they could not, the Supreme Court held that habeas corpus provided the exclusive federal remedy for an inmate "challenging the very fact or duration of [the inmate's] physical imprisonment" and seeking a determination of entitlement to immediate or speedier release from confinement. *Id.* at 500. Notably, as discussed further below, the Supreme Court recognized that the "considerable practical importance" of its decision was that before seeking "the intervention of a federal court" through a habeas corpus petition, the inmates would first be required to exhaust all adequate and available state remedies, including both administrative and judicial remedies. *Id.* at 477, 494-95.

expunge disciplinary sanctions from an inmate's prison record, which involved a loss of credits, was cognizable as a habeas corpus challenge to confinement); *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (holding that an inmate's challenge to a loss of good-time credits was properly brought as a habeas action because it challenged the fact or duration of custody); *Waletzki v. Keohane*, 13 F.3d 1079, 1080 (7th Cir. 1994) ("[G]ood-time credits reduce the length of imprisonment, and habeas corpus is available to challenge the duration as well as the fact of custody.").

C. *Sabisch v. Moyer*

As the Department accurately argues and as discussed above, the Court of Appeals has heretofore limited the availability of habeas relief for a confined inmate to a petition alleging either entitlement to immediate release or to a proceeding that might result in immediate release. However, the Court's recent decision in *Sabisch v. Moyer*, in which it revisited prior rulings concerning a different limitation on the availability of habeas relief, suggests that it may be open to revisiting that rule. 466 Md. 372 (2019).

In *Sabisch*, the Court abrogated rulings in which it had held that habeas corpus relief was available only to individuals who alleged that they were under "an actual or physical restraint." 466 Md. at 372-73 (abrogating *Hendershott v. Young*, 209 Md. 257 (1956), and *McGloin v. Warden of Maryland House of Corr.*, 215 Md. 630 (1958)). The Court indicated that it was willing to revisit those rulings based on the importance of the writ "for the protection of individual liberty." *Sabisch*, 466 Md. at 371 (quoting *Boumediene v. Bush*, 553 U.S. 723, 743 (2008)). Notably, in doing so, the Court found instructive "the [United States] Supreme Court's expansive interpretation of the federal habeas corpus

statute[.]" *Sabisch*, 466 Md. at 374. Notwithstanding the differences between the federal statute and Maryland's habeas law, the Court of Appeals remarked that the Supreme Court's broader habeas jurisprudence "guides our determination [in *Sabisch*] concerning the scope of habeas corpus relief." *Id.* at 373. Based in part on that federal jurisprudence, the Court concluded that Maryland's habeas corpus statute "does not necessarily imply physical custody, but instead may involve significant limitations or restrictions of a person's liberty other than physical custody." *Id.* at 368. As a result, habeas relief in Maryland is now available to individuals who are not physically confined or restrained but who are under "conditions that significantly restrict or restrain [their] lawful liberty within the State." *Id.* at 378.

The decision in *Sabisch* raises the possibility that the Court of Appeals may be receptive to revisiting other aspects of habeas corpus law in which the United States Supreme Court has adopted a broader view of the availability of relief than the Court of Appeals previously has. However, we need not consider that issue further here because, as we will discuss next, we conclude that even if Mr. Purnell would otherwise have standing to bring a petition for writ of habeas corpus to pursue his claim for diminution credits, he must first exhaust any adequate and available administrative remedies.[7]

[7] As an alternative argument, Mr. Purnell raised for the first time on appeal a contention that improperly calculated diminution credits may have an adverse effect on an inmate's security classification and, on that basis, constitute a restraint cognizable on habeas review. However, it does not appear that he made such a claim in his petition or properly averred that his own security classification would be altered if he were awarded the credits to which he asserts an entitlement. As a result, we do not consider that unpreserved argument. *See* Md. Rule 8-131(a).

II. THE STATUTORY REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES

On appeal, as it did before the circuit court, the Department contends in the alternative that Mr. Purnell's petition must be dismissed on the ground that he has not exhausted available administrative remedies. The Department contends that Mr. Purnell has an administrative remedy available to challenge the calculation of his diminution credits in the form of a grievance submitted to the Inmate Grievance Office.

An inmate "confined in a correctional facility in the Division of Correction [or] otherwise in the custody of the Commissioner of Correction . . . [who] has a grievance against an official or employee of the Division of Correction . . . may submit a complaint to the [IGO.]" Corr. Servs. § 10-206(a). Any grievance submitted to the IGO that is not "wholly lacking in merit on its face" must be referred to the Office of Administrative Hearings to "hold a hearing on the complaint as promptly as practicable." *Id.* § 10-207(b), (c). During such a hearing, the complainant has the right to appear, be represented by an attorney at the complainant's expense, and call and question witnesses. *Id.* § 10-208(d). Following such a hearing, unless the Office of Administrative Hearings finds the complaint wholly lacking in merit and so dismisses it, the Office must promptly issue a decision containing findings of fact, conclusions of law, and the disposition of the complaint, *id.* § 10-209(a), which the Secretary of the Department must, within 15 days, affirm, reverse, modify, or remand for further proceedings, *id.* § 10-209(c). The Secretary's final determination of a grievance submitted to the IGO is subject to judicial review by "the

circuit court of the county in which the complainant is confined," with a further opportunity to file an application for leave to appeal to this Court.[8] *Id.* § 10-210(b), (c).

Notably for our purposes, "[a] court may not consider an individual's grievance that is within the jurisdiction of the [IGO] or the Office of Administrative Hearings unless the individual has exhausted the remedies provided in this subtitle."[9] *Id.* § 10-210(a). The exhaustion requirement created by that "sweeping language" "could not have been more forcefully expressed in the statute." *Dixon v. Dep't of Pub. Safety & Corr. Servs.*, 175 Md. App. 384, 420 (2007) (quoting *McCullough v. Wittner*, 314 Md. 602, 609 (1989)); *see also Adamson v. Corr. Med. Servs.*, 359 Md. 238, 257 (2000) ("It is clear that the [Correctional Services Article] establishes for covered inmate grievances an administrative remedy

[8] As Mr. Purnell is currently incarcerated in Virginia, he would not be able to seek review by "the circuit court of the county in which [he] is confined[.]" Corr. Servs. § 10-210(b). We need not consider here what the proper venue for filing such a judicial review action would be for an inmate who is incarcerated in another state pursuant to the ICC.

[9] Pursuant to the Prisoner Litigation Act, §§ 5-1001 – 5-1007 of the Courts & Judicial Proceedings Article, "[a] prisoner may not maintain a civil action until the prisoner has fully exhausted all administrative remedies for resolving the complaint or grievance." *Id.* § 5-1003(a)(1). The Act applies to civil actions brought by prisoners "that relate[] to or involve[] a prisoner's conditions of confinement," *Massey v. Galley*, 392 Md. 634, 644-45 (2006) (quoting Cts. & Jud. Proc. § 5-1001(c)(1)), and "makes clear that 'an administrative remedy is exhausted when the prisoner has pursued to completion all appropriate proceedings for appeal of the administrative disposition, including any available proceedings for judicial review,'" *Harris v. McKenzie*, 241 Md. App. 672, 680 (2019) (emphasis removed) (quoting Cts. & Jud. Proc. § 5-1003(a)(2)). That Act, however, expressly excludes from its scope a "petition for habeas corpus relief." Cts. & Jud. Proc. § 5-1001(c)(3). As a result, we limit our review here to the exhaustion requirement contained in § 10-210 of the Correctional Services Article, which preceded by more than two decades the enactment of the Prisoner Litigation Act. *See* 1971 Md. Laws, ch. 210 (enactment predecessor to current § 10-210 of the Correctional Services Article); 1997 Md. Laws, ch. 495 (enacting Prison Litigation Act).

through the IGO . . . which must be invoked and exhausted before an inmate ordinarily may seek review of an adverse decision.").

The Department contends that Mr. Purnell has a right to file a grievance with the IGO concerning his diminution credits claim, which right he has not exhausted, and that the Circuit Court for Baltimore City therefore lacked jurisdiction to consider his petition for writ of habeas corpus addressing that same complaint. Mr. Purnell, relying on *Maryland House of Correction v. Fields*, 348 Md. 245 (1997), counters that there is no such requirement for habeas corpus petitions. We believe that Mr. Purnell reads *Fields* too broadly.

In *Fields*, the Court of Appeals considered three consolidated cases in which inmates sought writs of habeas corpus to challenge the calculation of their diminution credits. *Id.* at 249. The inmates each alleged that their good-conduct credits were miscalculated and, if the petitions were granted, the corrected number of credits would entitle them to immediate release from confinement. *Id*. at 252-56. The Division of Corrections argued that the petitions had to be dismissed because the inmates had not first sought and exhausted administrative remedies. *Id.* at 256. In concluding that the inmates were not required to exhaust administrative remedies before filing their habeas petitions, the Court relied on the nature of their claim, which alleged an entitlement to immediate release. The Court held that "an inmate is not required to utilize the inmate grievance procedure, and courts will entertain an inmate's petition for habeas corpus when the plaintiff alleges entitlement to immediate release and makes a colorable claim that [the inmate] has served the entire sentence less any mandatory credits." *Id.* at 261.

In relying on *Fields*, Mr. Purnell glosses over the Court's limitation on its ruling to inmates who allege an entitlement to immediate release. In a circumstance in which an inmate makes such a claim, a requirement to exhaust administrative remedies before filing a petition for writ of habeas corpus may result in a prolonged deprivation of liberty of the very type that the writ was created to correct. However, there is no such concern when the issue is the determination of a mandatory supervision release date that is, under any scenario, far in the future. In the latter circumstance, an inmate may pursue any available administrative remedies, including judicial review, to completion without a risk that the term of confinement will be extended beyond its lawful term before the matter can be completely adjudicated. Accordingly, the rule of *Fields* does not extend to Mr. Purnell's circumstance.[10]

Notably, as referenced above in footnote 6, the United States Supreme Court has not recognized an exception to the federal exhaustion requirement, even where an inmate alleges an entitlement to immediate release. In *Preiser*, the Supreme Court declined to relax the requirement that an inmate exhaust both state administrative and state judicial remedies before seeking habeas corpus relief in federal court. 411 U.S. at 491-92. The

[10] As noted in footnote 8, the administrative exhaustion requirement in the Prisoner Litigation Act expressly excludes habeas corpus petitions. Cts. & Jud. Proc. § 5-1001(c)(3). That exclusion was enacted against the background of Court of Appeals precedent, discussed above, that limits the availability of habeas corpus relief to petitions alleging an entitlement to immediate release or to a proceeding that might result in immediate release. If the availability of habeas corpus relief were expanded to encompass claims to speedier but not immediate release, the courts would need to consider whether the general exclusion of habeas petitions from the exhaustion requirement in the Prisoner Litigation Act extends to such claims. Because there is no such exclusion in § 10-210(a) of the Correctional Services Article, we need not address that question here.

Court observed that the exhaustion requirement promotes the state's "stronger interest" in prison administration, and that prisoners' concerns are more "efficiently and properly handled by the state administrative bodies." *Id*. Accordingly, "strong considerations of comity . . . require giving the States the first opportunity to correct the errors made in the internal administration of their prisons." *Id.* at 492. Provided that the state's remedies are "adequate and available," the Court concluded, exhaustion of those remedies is required under federal habeas corpus law. *Id.* at 493; *see also, e.g.*, *Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding that "habeas petitions containing both unexhausted and exhausted claims" must be dismissed under the federal statute); *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981) (stating that "[a]n exception [to the federal exhaustion requirement] is made only if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief"). Enforcing a requirement to exhaust administrative remedies is thus consistent with the Supreme Court's more expansive interpretation of the availability of habeas corpus relief reflected in *Preiser*.

In responding to Mr. Purnell's petition, the Department argued that the court should dismiss the petition because Mr. Purnell had not alleged that he had exhausted administrative remedies. The circuit court, relying on *Fields*, concluded that exhaustion was not required and, as a result, did not make any findings or conclusions regarding whether administrative remedies were available to Mr. Purnell and, if so, whether he had exhausted them. At oral argument, Mr. Purnell suggested that he might not have an adequate and available administrative remedy with the IGO because of his incarceration in

Virginia. The Department disagreed.[11] Under the circumstances, it is prudent to vacate the circuit court's order denying the petition and remand this matter to the circuit court for determinations concerning: (1) whether Mr. Purnell has an adequate and available administrative remedy with the IGO to pursue his claim for diminution credits; and (2) if so, whether he has exhausted that remedy. If Mr. Purnell has an adequate, available, and unexhausted administrative remedy, the circuit court must dismiss the petition. Otherwise, the court should rule again on the availability of the habeas corpus remedy, which will then be ripe for consideration on appeal.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AND CASE REMANDED FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY.

[11] Pursuant to the ICC, inmates "at all times [are] subject to the jurisdiction of the sending state," and "[t]he fact of confinement in a receiving state shall not deprive any inmate . . . any legal rights which the inmate would have had if confined in . . . the sending state." Corr. Servs. § 8-605 (c), (e). A receiving state is required to provide "adequate facilities" for hearings and maintain records of hearings, which are subject to the "governing law" of the sending state. *Id.* § 8-605(f).