

This document provides a portion of the trial court's 72 page Findings of Fact and Conclusions of Law, R-6-212, in Stapleton v. Singletary; submitted as an Appendix in the Defendants' appellate brief, it includes 17 pages of the trial court findings.

APPENDIX A

constitutional dimension (see DE 113).

B. Specific Complaints

45. Through their trial presentation and proposed Findings of Fact and Conclusions of Law (DE 188), Plaintiffs have focused on thirteen specific areas of alleged constitutional violations, which will be addressed individually.

i. Work-related Gaintime

46. Job assignment and program participation affect an inmate's ability to earn certain types of gaintime to be applied as a reduction of the overall release date.

47. Inmate job assignments are not gaintime rich or gaintime poor. Each offers the same opportunity to earn gaintime.

48. There presently are six categories of gaintime applied by the Department, only three of which relate to job assignment and program participation: educational gaintime, incentive gaintime, and work and extra gaintime.⁶

⁶ Two categories of basic gaintime are applied as lump sum awards based solely upon the date of offense and length of sentence. For prisoners whose offenses were committed prior to July 1, 1978, Weaver gaintime is awarded at a progressive formula of 5 days per month for the first and second years of sentence, 10 days per month for the third and fourth years of sentence, and 15 days per month for the fifth and succeeding years. Fla. Stat. § 944.27 (1977); see also Weaver v. Graham, 450 U.S. 24 (1981). For prisoners whose offenses were committed on or after July 1, 1978, reform gaintime is awarded at the rate of 10 days per month based upon length of sentence. Fla. Stat. § 944.275(4)(a) (1991). Some prisoners may be excluded from eligibility to receive these awards by statute. An inmate may also be favored with an award of meritorious gaintime of up to 60 days for an outstanding deed,

1 a. An inmate may receive up to 60 days of
2 educational gaintime for completing the requirements for, and
3 receiving, a general education development ("GED") certificate
4 or vocational certificate. Fla. Stat. § 944.275(4)(d). An
5 inmate may also receive an additional 6 days of gaintime for
6 completing 150 hours of mandatory literacy coursework.
7 Opportunities to participate in these educational programs and
8 receive these awards are available both to the GP and
9 protective management inmates at any given institution.

10 b. Inmates whose offense dates fall before July 1,
11 1978 or after June 14, 1983, may earn monthly awards of up to
12 20 days of incentive gaintime for work assignments and other
13 productive activities, including participation in educational
14 or vocational programs. Fla. Stat. § 944.275(4)(b). A
15 Department rule establishes guidelines for awarding incentive
16 gaintime. Fla. Admin. Code r. 33-11.0065. The rule provides
17 for an award of 0-8 days for a rating of above satisfactory;
18 9-16 days for a rating of outstanding; and an additional 0-4
19 days for overall institutional adjustment, participation in
20 self-betterment programs, and/or simply keeping one's cell
21 clean. No incentive gaintime may be awarded if an inmate is
22 rated only satisfactory in work and overall institutional
23 adjustment. An award of incentive gaintime does not directly
24 correlate to the number of days actually worked. Once rated,

25 such as saving a life, aiding an officer, or any other act
26 which is considered outstanding and commendable. Id. at §
944.275(4)(c).

1 an inmate may receive an award that falls anywhere within the
2 range designated for the rating category. The specific award
3 is determined by an inmate's classification team.

4 c. In Waldrup v. Dugger, 562 So. 2d 687 (Fla. 1990),
5 the Florida Supreme Court held that a revised incentive
6 gaintime provision, which decreased the maximum amount of
7 incentive gaintime available, was unconstitutional as applied
8 to offenders whose offenses were committed prior to the
9 effective date of the revision. Thus, inmates whose offense
10 dates fall between July 1, 1978 and June 14, 1983 must be
11 awarded incentive gaintime in accordance with the statutes in
12 effect at that time, which authorized up to 37 days per month
13 of work and extra gaintime, now generally referred to as
14 Waldrup gaintime.⁷ A Waldrup inmate may receive day-for-day
15 gaintime for each day of labor performed, based upon a 4-tier
16 evaluation: below satisfactory (no award); satisfactory (50%
17 of maximum award calculated); above satisfactory (75% of
18 maximum award calculated); and outstanding (100% of maximum
19 award calculated). In addition, an inmate may receive an
20 extra discretionary award of 0-6 days per month for
21 institutional adjustment or program participation.

22 There were approximately 5000 inmates in custody affected
23 by Waldrup. The previous incentive gaintime awards earned by
24 these inmates from July 1983, when the statutes changed, to

25 ⁷ Inmates cannot receive both work and extra gaintime and
26 incentive gaintime on the same sentence.

1 April 1990, when the Department began actual awards under
2 Waldrup, were converted into work and extra gaintime awards
3 through use of a pro rata formula which essentially provided
4 a windfall benefit to this group of inmates. The pro rata
5 formula was chosen as the conversion mechanism because the
6 Department lacked the documentation to make actual assessments
7 under the complex formula established by prior statutes and
8 rules. However, in April 1990, the Department was able to
9 begin making awards of work and extra gaintime on the basis of
10 actual performance, as assessed under the prior statutes and
11 rules. Overall monthly awards of work and extra gaintime for
12 this group of inmates diminished when the pro rata formula was
13 discontinued in favor of actual performance awards. All
14 inmates affected by the Waldrup decision were notified that
15 actual awards following the conversion would most likely be
16 lower. Because the conversion awards represent inflated
17 awards, awards made to inmates during the conversion period do
18 not provide a valid basis of comparison to present earnings in
19 either GP or PM status.

20 49. Not all inmates are eligible to earn full gaintime.
21 For example, inmates recently received into custody of the
22 Department will not be eligible for full gaintime awards until
23 they have completed orientation and received job assignments.
24 Inmates in transit, such as the 2500 inmates transferred
25 between January 1992 and October 1992 to resolve protection
26

claims, do not receive full gaintime.⁸ Inmates serving certain types of sentences, such as minimum mandatory terms, are ineligible to earn gaintime.

50. Disciplinary action adversely affects the award of gaintime. Disciplinary action in a given month invalidates any monthly award of work or incentive gaintime and may limit future awards during an extended disciplinary confinement status. Receipt of a disciplinary report ("DR") renders a Waldrup inmate ineligible for extra gaintime for the following six months.

51. Gaintime awards fluctuate from month to month across the entire prison population, as a result of variances in job ratings and other factors, such as transfers.

52. The PM rule provides that "[t]hose who accept work assignments shall be subject to awards of gain time pursuant to Rule 33-11.0065 in the same manner as general population." Fla. Admin. Code r. 33-3.0082(5).

53. Plaintiffs introduced three exhibits prepared for them by the Department's Bureau of Planning, Research & Statistics, numbered 1405-07, that purport to represent statistical comparisons of gaintime awards to PM and GP inmates for October 1992. Plaintiffs' Exhibit 1407, for example, indicates that the 299 PM inmates received an average

⁸ A non-Waldrup inmate may earn 0-4 days of incentive gaintime while in reception/orientation or transit status. A Waldrup inmate may earn 0-6 days of extra gaintime while in reception/orientation or transit status.

1 of 7.9 days, while 35,660 GP inmates received an average of
2 13.9 days. Each exhibit, however, bears the disclaimer,
3 "Inmates who are ineligible to earn Incentive Gaintime are
4 included in these figures: i.e., full Waldrup Cases, mandatory
5 sentences, life sentences, and new admissions." Plaintiffs
6 have provided no proof of the number of gaintime ineligible GP
7 and PM inmates. Thus, the Court can note that 44.5% of the PM
8 inmates received a zero award, compared to only 13.7% of the
9 GP inmates, but is unable to determine whether this difference
10 is caused by a large number of gaintime ineligible PM inmates,
11 a denial of comparable job opportunities to PM inmates, or
12 both. In short, by including people who are ineligible, these
13 statistics lose all analytical value.⁹

14 54. In addition, Plaintiffs introduced three exhibits
15 prepared at the request of the Assistant Secretary of
16 Operations, numbered 1401-03, that purport to list the
17 gaintime ("GT") awards to non-Waldrup PM inmates in each of
18 the months from August 1992 through October 1992 and compare
19 the award given to the average non-Waldrup GP inmate
20 performing the same type of job. Plaintiffs' Exhibits 1402
21 and 1403 reflect the following effort and gaintime reward for
22 utility workers at Florida State Prison:

23 ⁹ Plaintiffs argue, in their proposed Findings of Fact
24 and Conclusions of Law, that "[t]he burden is clearly on the
25 Department to explain" the discrepancies suggested by Exhibits
26 1405-07 (DE 188 at ¶ 39). But it is Plaintiffs who must prove
to this Court that SINGLETARY has intentionally violated their
constitutional rights. See infra at 61.

-September 1992

Rating (#)	Avg Days Worked (PM)	Avg GT Award (PM)	Avg Days Worked (GP)	Avg GT Award (GP)
Above Satis. (9)	7.56	4.00	20.00	8.00
Outstanding (15)	11.53	9.67	20.00	16.00

-October 1992

Rating	Avg Days Worked (PM)	Avg GT Award (PM)	Avg Days Worked (GP)	Avg GT Award (GP)
Above Satis. (3)	14.00	7.38	30.00	8.00
Outstanding (26)	15.50	14.42	30.00	16.00

55. However, the disparity is not as large when one looks at all job classifications, not simply utility worker:

-September 1992

Rating (#)	Avg Days Worked (PM)	Avg GT Award (PM)	Avg Days Worked (GP)	Avg GT Award (GP)
Above Satis. (23)	20.0	6.4	20-30	8.0
Outstanding (22)	14.8	11.9	20-30	16.0

-October 1992

Rating (#)	Avg Days Worked (PM)	Avg GT Award (PM)	Avg Days Worked (GP)	Avg GT Award (GP)
Above Satis. (15)	20.0	7.7	20-30	8.0
Outstanding (47)	18.5	14.7	20-30	16.0

56. The willingness of PM inmates to participate in work activities or group programs may, on the whole, be lower than that of GP inmates, because some inmates go to PM to "lay in"

1 or to isolate themselves from the population at large. This
2 factor could account, at least in part, for any discrepancy in
3 work evaluation and gaintime earnings between PM and GP
4 inmates.

5 57. Moreover, the figures for GP inmates do not seem
6 accurate. It strains credulity to imagine that the average
7 gaintime award for nearly 36,000 working GP inmates is the
8 maximum 8 days for above satisfactory performance, or 16 days
9 for outstanding performance, authorized by the regulations.
10 This imprecision in the GP comparison statistics likely flows
11 from the nature and purpose of the exhibits. These documents
12 are not the official gaintime records of the Department, which
13 are maintained by the Office of Programs. Ron Jones,
14 Assistant Secretary of Operations, requested general
15 information to provide an overview of gaintime awards. But he
16 is unaware of the criteria used to come up with the "average"
17 awards.

18 58. SINGLETARY introduced his Exhibit 25, a chart
19 prepared by the Bureau of Planning, Research & Statistics,
20 which purports to compare the average incentive gaintime
21 awards¹⁰ to inmates at several institutions on September 30,
22 1992, excluding those who are statutorily ineligible for
23 incentive gaintime and those admitted during September 1992:

24 ¹⁰ Plaintiffs' statistics apparently measured only that
25 portion of incentive gaintime based upon job performance,
26 while SINGLETARY's statistics included the 0-4 day
institutional adjustment awards.

Institution	Rating	Avg GT: non-PM	Avg GT: PM
FSP	Above Satis.	7.7	7.3
FSP	Outstanding	16.3	16.3
Union	Above Satis.	9.5	8.1
Union	Outstanding	19.8	20.0
Martin	Outstanding	18.3	18.4
Polk	Outstanding	19.6	18.6
Hendry	Outstanding	19.9	20.0

59. Utilizing statistical controls deemed appropriate by Dr. Bill Bales, Bureau Chief for the Bureau of Planning, Research & Statistics, the Department reported that, for offenders eligible to earn incentive gaintime, the average incentive gaintime award during October 1992 on a statewide basis were as follows:

Rating	Avg GT: GP inmates	Avg GT: PM inmates
Above Satis.	4.9	5.7
Outstanding	19.3	18.9

60. Wilson Bell, the Department's Assistant Secretary for Programs, presented testimony regarding the pattern of gaintime earnings of each of the inmates who were named as class members and witnesses for trial. Dr. Bell compared earnings of each individual inmate during prior periods in GP with earnings while in long-term PM.

a. Terry Royal: Royal is eligible for work and extra gaintime under the Waldrup decision. In 1990, following the completion of the conversion of previously earned incentive

1 gaintime into work and extra gaintime, Royal began to be
2 assessed for monthly awards under the statutes and rules in
3 place prior to June 15, 1983. From April 1990 through
4 November 1990, while in GP, Royal earned gaintime in a range
5 encompassing a low of 12 days during one month and a high of
6 22 days during one month. In 1991, after being placed in PM,
7 he earned a low of 15 days of gaintime in a single month and
8 a high of 23 days during 4 months.

9 b. Randy Wheeler: Wheeler is also eligible for
10 awards of gaintime pursuant to Waldrup. Following conversion
11 of previously earned incentive gaintime, Wheeler earned a low
12 of 10 and a high of 22 days of work and extra gaintime in one
13 month. Wheeler was placed into PM in December 1990, where he
14 earned a low of 12 days of gaintime to a high of 23 days
15 during four months in 1991. Wheeler continued to earn in the
16 range of 20 days per month during 1992, except during a brief
17 transfer between institutions.

18 c. Charles Brightwell: Brightwell is likewise a Waldrup
19 inmate. From March 1990 through the end of 1990, while in GP,
20 Brightwell earned a low of 0 days to a high of 23 days of
21 gaintime in a single month. During the calendar year 1991,
22 while still in GP, Brightwell earned a low of 0 days during
23 five months, because of disciplinary reports and confinement,
24 and a high of 23 days. In May 1992, Brightwell was
25 transferred to protective management, where he earned a low of
26 5 days to a high of 23 days per month, a range similar to his

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experience in GP.

1 d. Frederick Reinhart: Reinhart is another Waldrup
2 inmate. Beginning in April 1990, Reinhart was in a close
3 management status, which precluded him from earning gaintime.
4 In June 1990, Reinhart was assigned to be a "runner." As a
5 runner, Reinhart was able to earn 30 days of work gaintime in
6 June 1990 and 31 days in July 1990. Remaining in GP from
7 August 1990 through November 1990, Reinhart earned 16 days in
8 August, 0 days in September, 0 days in October, and 12 days in
9 November. In December 1990, Reinhart was placed into long-
10 term protective management, where he received a job assignment
11 and earned gaintime continuously through November 1992,
12 ranging from a low of 2 days in July 1991 to a high of 18 days
13 in June 1991. The majority of Reinhart's awards fell within
14 11 to 13 days per month.

15 e. Patrick Willis: Willis entered the prison system in
16 March 1992 and was awarded nominal gaintime during the
17 reception process in March and April 1992.¹¹ Willis arrived
18 at his permanent institution in May 1992 and received a DR,
19 which invalidated any gaintime award to be earned that month.
20 Willis was transferred into PM later that month, where he

21 ¹¹ During the reception process, an inmate is screened by
22 medical and may receive medical treatment prior to transfer to
23 a permanent institution. Classification staff develop a
24 social history, mental health profile, establish an
25 institutional inmate jacket, review commitment papers, and
26 determine an appropriate permanent assignment. This process
can take six to eight weeks, during which there is no job
assignment.

1 received awards of 4 days per month from June through August,
2 increasing to 20 days per month for September through
3 November. The low awards for June through August resulted
4 from satisfactory ratings for Willis' work assignments but
5 above satisfactory ratings for self-betterment. His work
6 performance then improved to an outstanding level, allowing
7 him to earn the maximum incentive gaintime.

8 f. Ronnie Weaver: Weaver was incarcerated in
9 November 1990 and immediately placed into PM. He was awarded
10 nominal gaintime during the first three months while in
11 reception/orientation and transit. In February 1991, Weaver
12 arrived at his permanent institution and received a job
13 assignment, earning 20 days of incentive gaintime per month
14 through February 1992. Weaver received 16 days in March 1992
15 and 18 days per month from April through October 1992.

16 g. Michael Wilson: Wilson is eligible to earn
17 incentive gaintime. While in GP in 1991, Wilson's earnings
18 ranged from 0 days due to disciplinary action or minimal
19 performance to a high of 20 days earned in eight of the twelve
20 months. In 1992, Wilson's awards ranged from 6 days to 20
21 days per month, with the lower awards primarily due to
22 transitory status. Wilson was in PM for five months during
23 1992. In three of those months, Wilson earned the maximum 20
24 day awards.

25 h. Brian Kennedy: Kennedy was incarcerated in
26 October 1991 and remained in reception and transit status

1 through November 1991. Once placed in GP at his permanent
2 institution, Kennedy earned 18-20 days of incentive gaintime
3 for three months. For the remainder of his months in GP,
4 Kennedy received no gaintime due to disciplinary action or
5 minimally satisfactory job performance. In September 1992,
6 Kennedy was placed in PM, where he consistently has received
7 maximum awards of 20 days of incentive gaintime each month.

8 i. Samuel Hinote: Hinote remained in reception and
9 transit from September 1991 until January 1992. His incentive
10 gaintime earnings during the first quarter ranged between 15
11 and 18 days per month, but dropped to 0 days during the second
12 quarter because of minimally satisfactory job performance.
13 During the third quarter, Hinote earned only 2 days of
14 gaintime. In September 1992, Hinote was placed into
15 administrative confinement pending a PM status determination.
16 The request for protection was resolved by transferring Hinote
17 to another permanent institution, where he was released into
18 GP. Hinote received a full-time job assignment at that time
19 and has been earning maximum gaintime awards. Hinote was
20 never placed into PM since his protection needs were resolved
21 through transfer.

22 j. Michael O'Donnell: O'Donnell entered the prison
23 system in June 1990 and remained in reception through July
24 1990. After reaching his permanent institution, O'Donnell
25 earned only nominal awards because continuing mental health
26 concerns prevented him from working. In April 1991, O'Donnell

1 was transferred to the Corrections Mental Health Institution
2 for treatment, where he remained until February 1992. After
3 two months in orientation and transit, O'Donnell reached his
4 permanent institution in May 1992, where he was initially
5 placed into GP. O'Donnell earned 15 days in May and 16 days
6 in June 1992. In July, O'Donnell requested protection and was
7 placed into PM, where he has consistently earned the maximum
8 incentive gaintime awards of 20 days per month.

9 k. Timothy Upshaw: Upshaw is eligible to earn
10 incentive gaintime. During 1990, while in GP, Upshaw received
11 a range of gaintime awards from 1 day per month for seven
12 months to 20 days per month for three months. In 1991, Upshaw
13 was in transit through February, and reached a permanent
14 institution in March. Upshaw earned 20 days in March and
15 April, 16 days in May and June, 12 days in July, 5 days in
16 August, 20 days in September, and 0 days in October 1991. In
17 November 1991, Upshaw was placed in PM, where he received a
18 job assignment and earned 20 days for November, 12 days for
19 December, and 20 days for January 1992. In February, Upshaw
20 returned to GP and earned 20 days. In late March, Upshaw's PM
21 status was reinstated for long-term protection. Since
22 returning to PM, Upshaw has received varying gaintime awards,
23 primarily due to disciplinary action.

24 l. Willerton Brown: Brown was initially received in
25 1984 and is eligible for incentive gaintime. His gaintime
26 awards for 1990 showed earnings of a low of 0 days due to

1 disciplinary action in two months to a high of 20 days during
2 6 months. In 1991, Brown received gaintime awards again
3 ranging from a low of 0 days due to disciplinary action during
4 4 months to a high of 10 days during 2 months. In 1992, this
5 pattern continued. In April 1992, Brown was placed in PM,
6 where his pattern of disciplinary violations and minimally
7 satisfactory performance has continued. However, on two
8 occasions, Brown has earned maximum awards of 20 days while in
9 PM.

10 m. Michael Chester: Chester remained in reception
11 and transit from January through March 1992. He arrived at
12 his permanent institution in April 1992, was assigned a job
13 and earned 18 days of incentive gaintime. After a transition
14 period, Chester was placed in long-term PM, where he has
15 earned 18 days per month during three months. No gaintime was
16 awarded for July 1992 and only 2 days for August 1992, due to
17 disciplinary action.

18 n. Cary Rininger: Rininger entered the prison system
19 in January 1992 and remained in reception and transit until
20 April 1992. After arriving at his permanent institution,
21 Rininger received DR's for 5 months. In September 1992,
22 Rininger was transferred into PM, where he earned 8 days the
23 first month, 20 days the second month, and received a DR in
24 the third month of PM status.

25 o. Alexander Czaplicki: Czaplicki was incarcerated
26 in April 1992 and remained in reception and transit through

June 1992. In July, Czaplicki received a DR and in late July, he requested protection. In August, while pending consideration for PM, Czaplicki earned 18 days of gaintime. In September, Czaplicki was placed in PM and earned 20 days of gaintime. Due to continuing disciplinary problems, however, Czaplicki's awards dropped to 0 thereafter.

p. Fred Lewis: Lewis remained in reception from June through July 1991. Upon arriving at his permanent institution, Lewis received a job assignment and his awards have ranged from a low of 0 days due to disciplinary action to a high of 20 days. During the first half of 1992, while still in GP, Lewis's gaintime earnings continued to fluctuate from a low of 0 days due to disciplinary action to a high of 20 days for 2 months. In July 1992, Lewis was placed into PM, where his gaintime earnings have continued in the same pattern, with a low of 0 days for three months due to disciplinary action and a high of 20 days for the two months not in disciplinary confinement.

q. Arthur Schaffer: Schaffer originally received the death penalty, but in December 1990, his sentence was commuted to life. Schaffer was placed directly into PM upon removal from death row. In 1991, Schaffer consistently earned 16 days per month, except for March, when he received only 14 days. In 1992, Schaffer earned 16 days for each of the first nine months, but only 11 days in October and 15 days in November.

r. Harold Stapleton: Stapleton was paroled in 1989

1 and returned to the Department's custody as a parole violator
2 in January 1991. During 1991, while in GP, Stapleton received
3 maximum 20-day awards during eight of the months and 0-day
4 awards in two months due to disciplinary action. In 1992,
5 Stapleton's performance deteriorated and he began receiving
6 nominal awards. In June 1992, Stapleton was placed into PM,
7 where he has earned 4 days for June, 8 days for July, and 12
8 days for each month from August through December. These mid-
9 range awards are due to Stapleton's performance being rated as
10 only above satisfactory rather than outstanding.

11 ii. Jobs

12 61. All able-bodied GP and PM inmates are expected to
13 work. See Fla. Stat. § 946.002; Fla. Admin. Code r. 33-
14 3.0082(5). Working may shorten an inmate's sentence, Fla.
15 Stat. § 944.275, reduce his custody status, id. at §
16 944.1905(3)(c)-(d), and alleviate boredom. Even "make work"
17 jobs are helpful to self-esteem and mental health.

18 62. Not all jobs are offered at all institutions,
19 although certain types of core jobs, such as food service,
20 houseman, and grounds squad, are basic to each facility.

21 63. There are not enough jobs for all inmates who are
22 currently incarcerated. Waiting lists are maintained for some
23 jobs.

24 64. Inmate job assignments are affected by medical and
25 psychological grades, which are given to each inmate in the
26 Department system.