UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

YANCEY L. WHITE,

Petitioner,

v. Case No. 03-C-581-C

WARDEN SCIBANA, F.C.I. OXFORD,

Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This is a case of a federal agency taking a clear and explicit direction of Congress, inventing an interpretation that is nowhere to be found, throwing in a headache-inducing formula that is based on the interpretation that is nowhere to be found and thereby creating a policy that dramatically affects the liberty of the Petitioner, Yancey White, and others like him.

Instead of allowing "good time credit" of 54 days for each year of a prisoner's term of imprisonment, as 18 U.S.C. §3624(b) provides, the Bureau of Prisons (BOP) has for whatever reason devised a formula that reduces the credit to 47 days a year. In Mr. White's case, with a 10-year sentence, that means that he would spend 70 additional days in prison that Congress did not intend him to spend when it unambiguously told the BOP what to do. He asks that the Court find that the statute is not ambiguous, and that he is entitled to the 530 days of good time[1] the statute directs.

1 The BOP has determined that Mr. White is entitled to 10 days less than the maximum allowable credit. (See Sentence Monitoring Good Time Data for Yancey White, attached to Petition).

PROCEDURAL BACKGROUND

Mr. White was convicted of three counts of distributing cocaine base in the Southern District of Illinois and sentenced to three, concurrent 120-month terms of imprisonment. Although he was sentenced on August 9, 1996, Mr. White received credit for the time he spent in jail prior to his sentencing, beginning on June 7, 1996. Mr. White is currently housed at the Federal Prison in Oxford, Wisconsin.

Mr. White has been advised by the BOP that he is entitled to the maximum good time credit allowed under §3624(b) with the exception of one year (in which he was given 10 days less than the maximum allowable credit). (See Sentence Monitoring Good Time Data for Yancey White, attached to Petition). The BOP calculates maximum good time credit at 47 days per year, giving Mr. White a total of 460 days of good time credit. The BOP based this calculation on a formula, found in Program Statement 5880.28, Sentence Computation Manual-CCA that results in a maximum of 47 days for each year of the term of imprisonment. Mr. White objected and informed the BOP that he believed that he should receive 540 days of good time credit as stated in § 3624(b).[2] On July 1, 2003, Mr. White filed a BP-9, Request for Administrative Remedy, which was denied. Mr. White sought additional appeal on the regional and national levels. The BOP's calculation was upheld. Mr. White has fully exhausted his administrative remedies.

ARGUMENT

If the intent of Congress is clear in §3624(b), the BOP's interpretation of it is meaningless, because "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984). Mr. White asserts that a plain reading of the statute requires

2 Administrative documents are attached to Mr. White's Petition.

the BOP to credit him with 530 days of good time. Customary tools of statutory construction also support that position.

I. THE STATUTE MEANS WHAT IT SAYS

Section 3624(b) reads:

> [A] prisoner who is serving a term of imprisonment of more than 1 year . . . may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term.

It could not be more clear that what Congress intended was that a qualifying prisoner would get 54 days of good time credit for every year of his sentence. Why else would it use the phrase "term of imprisonment," which is used hundreds of times in the United States Code with the same meaning? Why else would it include the phrase, "beyond the time served"?

The BOP has ignored the common use of "term of imprisonment" and the phrase "beyond the time served," and determined that what Congress really meant by "term of imprisonment" was time actually served. Under the BOP's logic, a prisoner with a 10-year sentence cannot receive 540 days of good time because his time actually served would be less than 10 years, once the good time is counted. The support for that reasoning is not found in the plain language of the statute.

On the contrary, the opposite is true. In §3624(a), Congress said: "A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b)," the good time section. In this section, "term of imprisonment" clearly means the sentence imposed, not time served, because the "less time credited" clause would otherwise not make sense.

Statutory terms are to be construed "in their context and with a view to their place in the

overall statutory scheme." Tyler v. Cain, 553 U.S. 656, 662 (2001). As the court pointed out in its December 22, 2003 order, "Courts presume that Congress intends to give the same meaning to the same term used in different parts of a statute." Order at 5 (citations omitted).

The BOP's interpretation is further undercut by the language of the statute. If a prisoner does not comply with institutional regulations, there is a possibility that the prisoner will receive no credit "toward service of the prisoner's sentence." In other words, credit is applied to the sentence, not to time served. Also, these determinations are to be made during the "year of the term," which is a quantifiable and unchanging period of time only if "term of imprisonment" means sentence imposed.

As the Court points out in its December 22 order at page 5, neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has reviewed §3624(b) in this context, but Justice Posner, in his concurring opinion in United States v. Prevatte, 66 F.3d 840, noted that good time credits have the potential of reducing a sentence by 14.7 percent (54 days of a 365-day year). Id. at 846.

The only appellate court to consider the BOP's interpretation of §3624 was the Ninth Circuit, which found in Pacheco-Camacho v. Hood, 272 F.3d 1266 (9th Cir. 2001) that the statute did "not provide clear guidance as to what the phrase 'term of imprisonment' means." Id. at 1268. However, although the Ninth Circuit noted that its first task was to determine whether the statute was clear on its face as to Congress' intent in calculating good time, it passed on the question of intra-statutory consistency and the use of the same phrase in §3624(a), instead deferring to the BOP's interpretation of the statute. Id. at 1271.[3]

The Ninth Circuit found that the statute was ambiguous because of its requirement that

3 The court gratuitously offered the opinion that Pacheco-Camacho was undercut by the Supreme Court's decision in United States v. Johnson, 529 U.S. 53 (2000). In that case, the Court interpreted §3624(e), which does not include the phrase "term of imprisonment."

[C]redit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence." To the court, this could not mean that a prisoner would receive the 54-day credit before completing the last year of his sentence. Id. at 1268-69.

There is no such inconsistency in a plain reading of the statute. The credit Mr. White receives for the last year of his term of imprisonment, his sentence, obviously is credited in the last year of his sentence. It can mean nothing else, and certainly does not support the BOP's interpretation of the meaning of "term of imprisonment." To say, "Credit for the last year of time served . . . shall be prorated," makes no sense, when time served is determined by the credit itself.

The chief failure of the Pacheco-Camacho rationale is found in the facts. Pacheco-Camacho was sentenced to a year and a day, but received good time credit. 272 F.3d at 1267. If "term of imprisonment" means actual time served, he would have received no good time credit, because the statute only allows good time credit if a prisoner serves "a term of imprisonment of more than 1 year."

II. THE INTENT OF CONGRESS IS NOT ONLY OBVIOUS, BUT KNOWN.

Not only does the plain language of the statute reveal Congress' intention as to the statute's meaning, the legislative history of the statute re-enforces Congress' intention on the calculation of good time credit. This intent is seen in at least two different ways through the legislative history of the statute.

First, Congress consciously amended the statute to calculate good time against the term of imprisonment. When Congress amends a statute, Congress intends its amendment to have real and substantial effect. Stone v. INS, 514 U.S. 386, 397 (1995).

Between 1902 and 1948, federal good time statutes allowed a well-behaved prisoner to

serve less time by receiving credit for good time against "the term of his sentence." 18 U.S.C. § 701 (1944). The time was deducted not from the time actually spent in prison, but from the term of the sentence in increments dependent upon the length of the term. See id.

In 1948, Congress adopted new statutory language: "to be credited as earned and computed monthly." Congress did so not to diminish the number of days a prisoner could earn but to address when the credit accrued. H.R. Report 86-935 (Aug. 18, 1959), reprinted in 1959 U.S.C.C.A.N. at 2519. This language "was interpreted as requiring good time to be computed on the basis of actual time served rather than on the basis of the term of the sentence as imposed by the court." Id.

The precise problem that is occurring now developed first in 1948: "The effect of this interpretation is to require well-behaved prisoners to serve longer periods of confinement than they would under the method of computation which had been used through half a century." H.R. Report 86-935 (Aug. 18, 1959), reprinted in 1959 U.S.C.C.A.N. at 2519. To solve this problem, Congress, in 1959, deleted the time served language and returned to the methodology of crediting against the sentence, not time served. H.R. Report 86-935 (Aug. 18, 1959), reprinted in 1959 U.S.C.C.A.N. at 2519.

In the current good time statute, Congress continued the pre-1948 and post-1959 formulation, eschewing language such as "credited as earned and computed monthly" and substituting "term of imprisonment."

Second, Congress made its intent clear by using 54 days – which is 15% of 365 days. As Senator Biden, a sponsor of the amendment, explained:

> I was the co-author of that bill. In the Federal courts, if a judge says you are going to go to prison for 10 years, you know you are going to go to prison for at least 85 percent of that time - 8.5 years, which is what the law mandates. You can get up to 1.5 years in good time credits, but that is all. And we abolished parole. So you know you'll be in prison for at least 8.5 years.

141 Cong. Rec. S2348-01 (Feb. 9, 1996) (emphasis added) (attached as Appendix A). Senator Biden also stated:

> So my Republican friends in a compromise we reached on the Senate floor back in November . . . said no State can get any prison money unless they keep their people in jail for 85 percent of the time just like we do at the Federal level in a law written by yours truly and several others.

140 Cong. Rec. S12,349 (1994) (statement of Sen. Biden) (attached as Appendix B). Congress clearly showed its intent to require 85% by the number itself: 54 is 15% of 365. In an earlier version of the good time statute, Congress used 36 days, "approximately 10%." Sen. Rep. 28-225, reprinted in 1984 U.S.C.C.A.N. at 3329-30. The final version simply added 5% to the maximum term.

The Seventh Circuit has endorsed in passing the 85% rule. See, e.g., United States v. Martin, 100 F.3d 46, 47 (7th Cir. 1996) (good time on a 30 year sentence was 25.5 years); United States v. Hill, 48 F.3d 228, 233 (7th Cir.1995) (prisoner would have to serve at least 18 months of 21 month sentence).

Although the 85% rule was the basis of the statute, and has been recognized by courts, it is ignored by the BOP. Under the BOP's interpretation of good time, no federal prisoner, no matter how virtuous, ever serves less than 87.2% of the sentence imposed. In Mr. White's case, that 2% difference means 70 days.[4]

Clearly, this is not what Congress intended.

4 The 2% difference is a costly proposition to taxpayers. According to the BOP's website, www.bop.gov, there are 173,641 inmates under its control, 94.7% of whom are serving sentences of one year to less than life.

CONCLUSION

For all the reasons set forth herein, Mr. White respectfully requests that the Court grant her petition for writ of habeas corpus and direct the Bureau of Prisons to credit Mr. White with 54 days' good time for each year that he is eligible for the maximum credit, at this point, a total of 530 days.

Dated this 18th day of February, 2004.

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