SUPREME COURT OF THE UNITED STATES

No. 90–1745

UNITED STATES, PETITIONER *v.* RICHARD WILSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[March 24, 1992]

JUSTICE STEVENS, with whom JUSTICE WHITE joins, dissenting.

Today's rigid interpretation of a remedial statute is not supported by the text, legislative history, or underlying policies of the statute. In *Crandon* v. *United States*, 494 U. S. 152, 158 (1990), this Court said that ``[i]n determining the meaning of [a] statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'' The Court has failed to do this today. The statute at issue, 18 U. S. C. §3585(b), gives the convicted defendant a right to have his term of imprisonment shortened by the amount of time he has already spent in either federal or state custody as a result of his offense, provided that the time has not already been credited against another sentence.[1]

The defendant's right to the full credit authorized by

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[1]Title 18 U. S. C. §3585(b) provides:

``(b) CREDIT FOR PRIOR CUSTODY.—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences —

``(1) as a result of the offense for which the sentence was imposed; or

``(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.''

the statute is obviously an important right. Both the At-torney General and the sentencing judge have a duty to respect and protect that right. Moreover, it is clear that in the event there is a dispute between the parties over the right to a credit, the dispute must be resolved by the court. No one contends that the Attorney General has unreviewable discretion to determine the appropriate credit in any case.[2]

In most cases, the calculation of the credit is a routine, ministerial task that will not give rise to any dispute.[3] Occasionally, however, as this case demonstrates, there may be a legitimate difference of opinion either about the meaning of the statute or about the relevant facts.[4] Such a dispute must, of course, be resolved by the judge. The only question that remains, then, is *when* the judge shall resolve the issue—at the time of sentencing, when the defendant is represented by counsel, or at some later date, after the defendant has begun to serve his sentence.

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[2]Prior to 1987, when the statute assigned the initial responsibility for determining the length of the credit to the Attorney General, it was settled that his determination was subject to judicial review after the prisoner exhausted his administrative remedies. See *Chua Han Mow* v. *United States*, 730 F. 2d 1308, 1313 (CA9 1984), cert. denied, 470 U. S. 1031 (1985).

[3]As respondent acknowledged, ``the arithmetical task of figuring out the exact date an offender will finish serving his sentence'' ``is essentially an administrative ministerial function.'' Tr. of Oral Arg. 4; see also *id*., at 10, 21, 52.

[4]Typically the dispute centers on whether the questioned time was ``official detention'' or whether the time has already been ``credited'' to another sentence. See, *e. g.*, *United States* v. *Beston*, 936 F. 2d 361 (CA8 1991) *(per curiam)*; *United States* v. *Chalker*, 915 F. 2d 1254 (CA9 1990); *United States* v. *Woods*, 888 F. 2d 653 (CA10 1989), cert. denied, 494 U. S. 1006 (1990).

The credit at issue in this case was a period of almost 14 months that respondent had spent in state custody before he entered into a plea agreement with the federal pros-

ecutor.[5] Prior to the amendment of §3585(b),[6] which be-came effective in 1987, the statute—at least as construed by the Sixth Circuit where this case arose—did not authorize a credit for time spent in state custody. See *United States* v. *Blankenship*, 733 F. 2d 433, 434 (1984).[7] Consistent with that pre-amendment practice, the District Court denied respondent's request for credit for the 14 months that he had spent in state custody.[8] There are two points

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[5]In the District Court, the Government did not take any position with respect to respondent's request for jail credit, stating that ``as to defense's petition that the time spent incarcerated on state charges for the crimes which occurred prior to the federal conspiracy, that's up to the court and the government takes no position as to that.'' Tr. 86. In the Court of Appeals, however, the Government contended that respondent was not entitled to the credit. See Brief for Appellee in No. 89–6583 (CA6), pp. 14–15.

[6]Before §3585 became effective, 18 U. S. C. §3568 (1982 ed.) governed credit for presentence time spent in official detention.

[7]See also *United States* v. *Garcia-Gutierrez*, 835 F. 2d 585, 586 (CA5 1988) (construing former §3568).

[8]``IT IS THE JUDGMENT OF THIS COURT THAT defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of:

``Ninety six months (96), which includes an upward departure of thirty-three months. Defendant is unable to pay a fine, or the cost of his incarceration or supervised release. Defendant will not be given any credit for the time spent in state custody.'' Record, Doc. No. 56.

The Government defended this ruling in its brief to

that emerge from that ruling: First, the District Court erroneously construed the amended statute, and second, the legal question that the District Court decided was ripe for decision at the time of sentencing.

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the Court of Appeals, arguing:

``Although there is some authority that a defendant is entitled to credit for time served in state custody once a federal detainer has been lodged, the state confinement must be the product of action by federal law enforcement officials. *United States* v. *Garcia-Gutierrez*, 835 F. 2d 585, 586 (5th Cir. 1988); *United States* v. *Harris*, 876 F. 2d 1502, 1506 (11th Cir. 1989), *cert. denied,* [493 U. S. 1005] (1989). The federal detainer must be the exclusive reason a prisoner in state custody has not been released on bail. *United States* v. *Blankenship*, 733 F. 2d 433, 434 (6th Cir. 1984).'' Brief for Appellee in No. 89–6583 (CA6), pp. 14–15.

In its opinion today, the Court emphasizes the fact that the state court later awarded respondent credit for his 14 months in pretrial detention, arguing that he therefore would not have been entitled to a federal credit if the federal determination had been made after the state sentence was imposed. See *ante*, at 3, 4–5. This argument is misleading for three reasons. First, if the Federal District Court had granted respondent's request, it seems unlikely that the state court would also have allowed the credit. Second, although the Court assumes that the risk of a double credit could be avoided by postponing the credit determination until after the convicted defendant begins to serve his federal sentence, that assumption is erroneous because state proceedings frequently do not terminate until after a defendant begins to serve his federal sentence or, indeed, in some cases, until after the defendant has been released from federal custody. Third, when a correct federal sentence, including a correct credit for pretrial custody, has been imposed, the subsequent action of a state court concerning the amount of punishment for any state offenses the defendant may have committed is purely a matter of state concern.

In this case, for example, if the Federal Sentencing Guidelines had prescribed a sentence of less than 14 months, and if the District Court, or indeed the Attorney General, had awarded respondent the proper credit, and therefore released him from custody, it would be bizarre to conclude that the Federal Government should rearrest him if a Tennessee court subsequently decided to give him the same credit because he would already have served almost 14 months in custody, thus fulfilling his federal sentence. The *possibility* that a state court will allow the same credit that a federal court allows exists whenever a state sentence is imposed after the federal credit determination is made, whether it is made by the trial judge or by the Attorney General

and whether it is made at the sentencing hearing or at the commencement of the federal sentence. The *likelihood* that the state court will allow a second credit after a federal credit has been allowed seems remote no matter when or by whom the federal determination is made. More importantly, the existence of a hypothetical risk of double credits in rare cases involving overlapping state and federal jurisdiction is not a sufficient reason for refusing to give effect to the plain language of the statute in cases in which no such problem is presented.

The Court's entire analysis rests on an incorrect premise. The Court assumes that the statute mandates one of two starkly different procedures: *either* the credit determination must *always* be made by the Attorney General after the defendant has begun to serve his sentence, *or* it must *always* be made by the sentencing judge at the time of sentencing. Neither of these procedures is compelled by the statutory text. An ordinary reading of the statute's plain language (``[a] defendant *shall be given* credit toward the service of a term of imprisonment . . . .'') suggests that the judge has ample authority to delegate the task of calculating the credit to a probation officer or to the prosecutor, subject, of course, to judicial review, or to make it himself in the first instance. Surely there is nothing in the statutory text that purports to deprive the judge of discretion to follow whichever procedure seems best suited to the particular facts of a given case. The text, which uses the passive voice, does not specify who will make the decision about jail credit. Certainly we should give effect to Congress' choice of words, and understand that the text, as written, does not identify a particular decisionmaker, and therefore, the appropriate decisionmaker may be *either* the judge or the Attorney General depending on the

circumstances.[9]

The statute does indicate that the decision should be made after ``the sentence was imposed'' and that the credit shall include time spent in official detention ``prior to the date the sentence commences'' even if some of that time is after the sentencing hearing. If, as is true in most cases, the convicted defendant begins to serve his sentence immediately after it is imposed, it is perfectly consistent with the text in such cases to have the judge determine the credit at the conclusion of the sentencing hearing. Even if the commencement of the sentence is postponed until a later date, an order specifying the amount of the credit to which the defendant was then entitled, and directing that an additional credit be given if appropriate, would also conform to the statutory text. The statute does not prohibit the judge from resolving the issue at any time after the sentence has been imposed.[10] In short, the text does not mandate any

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[9]Those Courts of Appeals that have recognized the shared role of the sentencing judge and the Attorney General in the decision to award jail credit include the Ninth Circuit and the Eighth Circuit. See, *e. g.*, *United States* v. *Chalker*, 915 F. 2d, at 1258; *United States* v. *Beston*, 936 F. 2d, at 363.

[10]``Instead, we conclude that by failing to specify to whom such power was vested, Congress intended the Attorney General and the district courts to have concurrent authority to grant credit for time served. As a practical matter, our holding will give to the district court, in its discretion, the initial opportunity to grant credit for time previously served. We believe this result to be fully compatible with Congress' intent in passing the Comprehensive Crime Control Act of 1984. The Senate Report, in discussing the sentencing provisions of the Act, specifically decried the lack of certainty and finality under the pre-Guidelines sentencing system to the effect that

particular procedure that must be followed in every case.

Although Congress' use of the passive voice clearly leaves open the question of who the decisionmaker is with respect to jail credit, the placement of §3585 in Subchapter D-Imprisonment, in which ``the court'' is called upon to determine the sentence (§3581), impose the sentence (§3582), include a term of supervised release (§3583), and determine whether the term is to run concurrently or consecutively in the case of multiple sentences (§3584), clearly points to the judge as the person who is to calculate credit (§3585) in the first instance. Congress could have made this perfectly clear by repeating the phrase ``the court'' in §3585, but that was made almost unnecessary by placing §3585 in a subchapter in which the court clearly had responsibility for every action that needed to be taken, but could also delegate actions to the appropriate authorities.

The Court's textual argument amounts to nothing more than an assertion that because *sometimes* all issues relating to the credit determination will not be ripe for decision at the time of sentencing, the trial court *never* has authority to make the credit determination even in cases that are ripe for

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`prisoners often do not really know how long they will spend in prison until the very day they are released.' *Crime Control Act*, S. Rep. No. 225, 98th Cong., 2d Sess. at 49, *reprinted in* 1984 U. S. Code Cong. & Admin. News at 3232. Allowing the district court, in its discretion, to compute credit time when the sentence is imposed furthers this congressional purpose by informing one convicted of a crime at the outset of their sentence precisely how long they will spend in prison.'' *United States* v. *Chalker*, 915 F. 2d, at 1258 (footnotes omitted).

decision.[11] Because this reasoning is so plainly flawed, the Court's holding must rest on its understanding of the legislative history. The history on which the Court relies includes no relevant comments in the Committee Reports or the debates. It consists only of the fact that prior to 1987 the statute directed the Attorney General to make the credit determination. See *ante*, at 2. It seems to me, however, that that smidgen of history merely raises the issue without answering it. The fact that Congress carefully rewrote the relevant section in a way that makes the defendant's right significantly more valuable tends to support the conclusion that the changes in language were deliberate and should not be ignored. See *Union Bank* v. *Wolas*, 502 U. S. — (1991); *United States Railroad Retirement Bd.* v. *Fritz*, 449 U. S. 166, 179 (1980). Recognizing the District

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[11]Certainly there are some credit issues that can arise that are ripe for decision at the time of the sentencing hearing. What constitutes ``official detention'' is one such issue. It is also an issue on which the Courts of Appeals are currently divided. For example, in *Moreland* v. *United States*, 932 F. 2d 690, 692 (1991), the Eighth Circuit agreed with Moreland that he should receive credit for the time he spent at a community treatment center; however, in *United States* v. *Insley*, 927 F. 2d 185, 186 (1991), the Fourth Circuit held that Insley's conditions of release did not constitute custody for purposes of credit; in *Ramsey* v. *Brennan*, 878 F. 2d 995, 996 (1989), the Seventh Circuit would not credit the time that Ramsey spent in a halfway house while awaiting trial, and in *United States* v. *Woods*, 888 F. 2d, at 656, the Tenth Circuit held that Woods was not entitled to credit for the time he spent at a residential treatment center when he was out on bond. In each of these cases, the issue was ripe for decision at the sentencing hearing.

Court's authority to enter an appropriate order at the conclusion of the sentencing hearing is entirely consistent with a congressional purpose to enhance the value of this right.

No statutory policy would be adversely affected by recognizing the District Court's authority to make the initial credit determination in appropriate cases, and in fact, two important policies would be served. First, as the Court of Appeals for the Ninth Circuit has observed, see n. 10, *supra*, allowing the district court, in its discretion, to compute the credit when the sentence is imposed furthers the interest in providing prisoners with prompt, accurate, and precise information about the time they must spend in prison. This policy is expressly identified in the Senate Report describing the value of a procedure ``whereby the offender, the victim, and society all know the prison release date at the time of the initial sentencing by the court, subject to minor adjustments based on prison behavior called `good time.''' S. Rep. No. 98–225, p. 46 (1983).[12]

Second, and of even greater importance, allowing the District Court to make the credit determination furthers the interest in uniform and evenhanded sentencing that is the centerpiece of the entire Sentencing Reform Act of 1984. When there are disputed issues that must be resolved by a judge, an adversarial proceeding, in which the parties are represented by counsel and the proceeding takes place in open court and on the record, is the best guarantee of a fair and accurate decision.[13] The

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[12]As the Senate Report made clear, one objective of the Act was to redress the situation in which ``prisoners often do not really know how long they will spend in prison until the very day they are released.'' S. Rep. No. 98–225, at 49.

[13]Several States have recognized the advantages of

convicted defendant is represented by trial counsel at the time of sentencing, but usually must fend for himself after he is incarcerated. Committing the decision to the Attorney General after the defendant has begun to serve his sentence, particularly if he must serve his sentence in some facility remote from the district of conviction, can only minimize the effective participation of defense counsel. Indeed, it may generate meritless *pro se* claims for credit that could be avoided by prompt consideration at sentencing, as well as complicate and delay the disposition of meritorious claims. A flexible approach that allows the judge to decide when and how the credit determination should be made is fully consistent with the purposes of the statute and with its text.[14]

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assigning to the court the task of calculating jail credit. See Fla. Stat. §921.161 (1991) (``A sentence of imprisonment shall not begin to run before the date it is imposed, but the court imposing a sentence shall allow a defendant credit for all of the time he spent in the county jail before sentence. The credit must be for a specified period of time and shall be provided for in the sentence''); see also Cal. Penal Code Ann. §2900.5(d) (West Supp. 1992); Mass. Gen. Laws §279:33A (1990).

[14]The information required for the sentencing judge to make a credit determination could easily become part of the information that is routinely provided to the judge in the presentence report. Such a report already contains the convicted offender's prior criminal history, which includes much of the information necessary to decide whether he is eligible for credit for time in custody. The report could contain the amount of jail credit the person is entitled to, and if there are other sentences pending or unserved, a recommendation whether the current sentence should be concurrent or consecutive to any

For the foregoing reasons, I would affirm the judgment of the Court of Appeals.

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prior sentences.