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 THOMAS delivered the opinion of the Court.

A defendant convicted of a federal crime has a right under 18 U. S. C. §3585(b) to receive credit for certain time spent in official detention before his sentence begins. In this case, we must decide whether the District Court calculates the credit at the time of sentencing or whether the Attorney General computes it after the defendant has begun to serve his sentence.

In the summer and early fall of 1988, respondent Richard Wilson committed several crimes in Putnam County, Tennessee. The precise details of these crimes do not concern us here. It suffices to state that Tennessee authorities arrested Wilson on October 5, 1988, and held him in jail pending the outcome of federal and state prosecutions. After certain preliminary proceedings, Wilson eventually pleaded guilty to various federal and state criminal charges.

On November 29, 1989, the United States District Court for the Middle District of Tennessee sentenced Wilson to 96 months' imprisonment for violation of the Hobbs Act, 18 U. S. C. §1951. The District Court denied Wilson's request for credit for time served during his presentence state custody. On December 12, 1989, a Tennessee trial court sentenced Wilson to several years' imprisonment for robbery and two other felonies. In contrast to the District Court, the

state court granted Wilson 429 days of credit toward his state sentence. Later that day, Tennessee authorities transferred Wilson to federal custody, and he began serving his federal sentence.

Wilson appealed the District Court's refusal to give him credit for the time that he had spent in state custody. Reversing the District Court, the United States Court of Appeals for the Sixth Circuit held that Wilson had a right to credit and that the District Court should have awarded it to him. 916 F. 2d 1115 (1990). We granted certiorari, 502 U. S. —— (1991), and now reverse.

The Attorney General, through the Bureau of Prisons (BOP), has responsibility for imprisoning federal offenders. See 18 U. S. C. §3621(a). From 1966 until 1987, a provision codified at 18 U. S. C. §3568 (1982 ed.) required the Attorney General to award federal prisoners credit for certain time spent in jail prior to the commencement of their sentences. This provision, in part, stated:

> ``*The Attorney General shall give any such person credit* toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.'' Pub. L. 89–465, §4, 80 Stat. 217 (emphasis added).

The Attorney General implemented this provision by computing the amount of credit after taking custody of the sentenced federal offender. Although the federal courts could review the Attorney General's determination, the sentencing court did not participate in computation of the credit. See, *e.g.*, *United States* v. *Morgan*, 425 F. 2d 1388, 1389–1390 (CA5 1970).

In the Sentencing Reform Act of 1984, 18 U. S. C. §3551 *et seq*., which became effective in 1987, Congress rewrote §3568 and recodified it at §3585(b). Unlike its predecessor, §3585(b) does not mention the Attorney General. Written in the passive voice, it states:

> ``*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.'' 18 U. S. C. §3585(b) (emphasis added).

In describing the defendant's right to receive jail-time credit in this manner, the provision has created doubt about whether district courts now may award credit when imposing a sentence. The question has significance in this case because the final clause of §3585(b) allows a defendant to receive credit only for detention time ``that has not been credited against another sentence.'' When the District Court imposed Wilson's 96-month sentence on November 29, 1989, Wilson had not yet received credit for his detention time from the Tennessee courts. However, by the time the Attorney General imprisoned Wilson on December 12, 1989, the Tennessee trial court had awarded Wilson 429 days of credit. As a result, Wilson could receive a larger credit if the statute permitted crediting at sentencing, and thus before the detention time had been credited against another sentence.

The United States argues that it is the Attorney General who computes the amount of the credit after the defendant begins his sentence and that the Court of Appeals erred in ordering the District Court to award credit to Wilson. Wilson counters that §3585(b) authorizes the District Court to compute the amount of the credit at sentencing. We agree with the United States.

We do not accept Wilson's argument that §3585(b) authorizes a district court to award credit at sentencing. Section 3585(b) indicates that a defendant may receive credit against a sentence that ``*was imposed*.'' It also specifies that the amount of the credit depends on the time that the defendant ``*has spent*'' in official detention ``prior to the date the sentence commences.'' Congress' use of a verb tense is significant in construing statutes. See, *e.g.*, *Otte* v. *United States*, 419 U. S. 43, 49–50 (1974); *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation Inc.,* 484 U. S. 49, 63–64, n. 4 (1987). By using these verbs in the past and present perfect tenses, Congress has indicated that computation of the credit must occur after the defendant begins his sentence. A district court, therefore, cannot apply §3585(b) at sentencing.

Federal defendants do not always begin to serve their sentences immediately. In this case, the District Court sentenced Wilson on November 29, 1989, but Wilson did not begin his sentence until December 12, 1989. At sentencing, the District Court only could have speculated about the amount of time that Wilson would spend in detention prior to the commencement of his sentence; the court did not know when the state-court proceedings would end or when the federal authorities would take Wilson into custody. Because §3585(b) bases the credit on how much time a defendant ``has spent'' (not ``will have spent'') prior to beginning his sentence, the District Court could not compute the amount of the credit at sentencing.

The final phrase of §3585(b) confirms this interpretation. As noted above, it authorizes credit only for time that ``has not been credited against another sentence.'' Wilson argues that this phrase does not prevent him from receiving credit because his official detention ``ha[d] not been credited''

against the state sentence when the District Court imposed the federal sentence. Under this logic, however, if the District Court had sentenced Wilson a few weeks later than it did, he would not have received credit under §3585(b). This interpretation of the statute would make the award of credit arbitrary, a result not to presumed lightly. See *United States* v. *Turkette*, 452 U. S. 576, 580 (1981) (absurd results are to be avoided). We can imagine no reason why Congress would desire the presentence detention credit, which determines how much time an offender spends in prison, to depend on the timing of his sentencing. For these reasons, we conclude that §3585(b) does not authorize a district court to compute the credit at sentencing.

We agree with the United States that the Attorney General must continue to compute the credit under §3585(b) as he did under the former §3568. When Congress writes a statute in the passive voice, it often fails to indicate who must take a required action. This silence can make the meaning of a statute somewhat difficult to ascertain. See, *e.g.*, *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U. S. 112, 128 (1977); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 102–103 (1979). Yet, even though §3585(b) no longer mentions the Attorney General, we do not see how he can avoid determining the amount of a defendant's jail-time credit.

After a District Court sentences a federal offender, the Attorney General, through the Bureau of Prisons, has the responsibility for administering the sentence. See 18 U. S. C. §3621(a) (``A person who has been sentenced to a term of imprisonment . . . shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed''). To fulfill this duty, the Bureau of Prisons must know how much of the sentence the offender has left to serve.

Because the offender has a right to certain jail-time credit under §3585(b), and because the district court cannot determine the amount of the credit at sentencing, the Attorney General has no choice but to make the determination as an administrative matter when imprisoning the defendant.

Crediting jail-time against federal sentences long has operated in this manner. After Congress enacted §3568 in 1966, the Bureau of Prisons developed detailed procedures and guidelines for determining the credit available to prisoners. See Apps. B and C to Brief for United States (stating BOP's procedures for computing jail-time credit determinations); see also *United States* v. *Lucas*, 898 F. 2d 1554 (CA11 1990). Federal regulations have afforded prisoners administrative review of the computation of their credits, see 28 CFR §§542.10–542.16 (1990); *Lucas, supra,* at 1556, and prisoners have been able to seek judicial review of these computations after exhausting their administrative remedies, see *United States* v. *Bayless*, 940 F. 2d 300, 304–305 (CA8 1991); *United States* v. *Flanagan,* 868 F. 2d 1544, 1546 (CA11 1989); *United States* v. *Martinez*, 837 F. 2d 861, 865–866 (CA9 1988). Congress' conversion of an active sentence in §3586 into a passive sentence in §3585(b) strikes us as a rather slim ground for presuming an intention to change these well-established procedures. ``It is not lightly to be assumed that Congress intended to depart from a long established policy.'' *Robertson* v. *Railroad Labor Board,* 268 U. S. 619, 627 (1925).

Wilson argues that our conclusion conflicts with the familiar maxim that, when Congress alters the words of a statute, it must intend to change the statute's meaning. See *Russello* v. *United States*, 464 U. S. 16, 23–24 (1983). He asserts that, by removing the explicit reference to the Attorney General when it

enacted §3585(b), Congress expressed a desire to remove the Attorney General from the process of computing sentences. Otherwise, Wilson contends, Congress would have had no reason to modify the provision as it did. We have no difficulty with the general presumption that Congress contemplates a change whenever it amends a statute. In this case, however, we find that presumption overcome by our conclusions that the District Court cannot perform the necessary calculation at the time of sentencing and that the Attorney General, in implementing the defendant's sentence, cannot avoid computing the credit.

We candidly acknowledge that we do not know what happened to the reference to the Attorney General during the revision. We do know that Congress entirely rewrote §3568 when it changed it to its present form in §3585(b). It rearranged its clauses, rephrased its central idea in the passive voice, and more than doubled its length. In view of these changes, and because any other interpretation would require us to stretch the meaning of the words that §3585(b) now includes, we think it likely that the former reference to the Attorney General was simply lost in the shuffle.

Our interpretation of §3585(b), however, does not render the 1987 revision meaningless. Congress altered §3568 in at least three ways when it enacted §3585(b). First, Congress replaced the term ``custody'' with the term ``official detention.'' Second, Congress made clear that a defendant could not receive a double credit for his detention time. Third, Congress enlarged the class of defendants eligible to receive credit. Under the old law, a defendant could receive credit only for time spent in custody in connection with ``the offense . . . for which sentence was imposed.'' Under the new law, a defendant may receive credit both for this time and for time spent in official detention in connection with

``any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed.'' In light of these revisions, and for the foregoing reasons, we conclude that the Attorney General may continue to compute the amount of the credit. The judgment of the Court of Appeals is

Reversed.