

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division**

JOHN HENRY JOHNSON

*

Civil No.

v.

*

**PETITION
FOR WRIT OF HABEAS
CORPUS**

**STEPHEN DEWALT, Warden,
Federal Prison Camp, Cumberland, MD**

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I. PRELIMINARY STATEMENT

1.1 The petitioner is a federal prisoner at the Federal Prison Camp–Cumberland, Maryland, whose statutory and due process rights are being violated by the Bureau of Prisons’ misinterpretation of 18 U.S.C. section 3624(b). This misinterpretation deprives him of eligibility for the fifty-four days of good time credit to which he is entitled for each year of his term of imprisonment. The petitioner requests an expedited review of this petition because, if his sentence were correctly calculated, he would be eligible for halfway house placement in November 2004 and for release from custody in May 2005.

II. JURISDICTION

2.1 This Court has jurisdiction over this action pursuant to 28 U.S.C. section 2241 because the petitioner’s term in federal custody is being determined in violation of the Constitution and laws of the United States.

2.2 The petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. section

1331 in that the action arises out of the Constitution of and laws of the United States and seeks corrective action by officers and employees of the United States in their official capacity.

2.3 The petitioner also invokes the jurisdiction of this Court pursuant to 28 U.S.C. section 1343(4) in that the petitioner seeks to redress deprivation of rights guaranteed by both the Constitution and federal statutes.

III. PARTIES

3.1 The petitioner is presently incarcerated at the Federal Prison Camp–Cumberland, Maryland (“FPC–Cumberland”) pursuant to the judgment of the United States District Court for the Middle District of North Carolina.

3.2 Stephen Dewalt is the Warden of FPC–Cumberland and, through the Bureau of Prisons, an agency of the United States Department of Justice, is responsible for the petitioner’s custody and for calculation of his term of confinement.

IV. STATEMENT OF FACTS

4.1 On April 18, 1990, the Honorable Richard C. Erwin, United States District Judge for the Middle District of North Carolina, sentenced the petitioner to a term of imprisonment of 220 months, upon his conviction of various narcotics violations in United States v. John Henry Johnson, Cr-89-251-03-G. A copy of the judgment is attached as Exhibit A.

4.2 Mr. Johnson has been in custody in connection with this offense since September 28, 1989.

4.3 18 U.S.C. section 3624(b) provides that “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 . . . of up to 54 days at the end of each year of the prisoner's term of imprisonment.”

4.4 Under Bureau of Prisons (“BOP”) policy as set out in Program Statement 5880.28 (July 19, 1999), the maximum allowable good time credit that can be awarded to a prisoner sentenced to a year and a day or more is approximately forty-seven days per year, because the BOP bases its calculations on the actual time in prison rather than the sentence imposed. A copy of the relevant portions of the program statement, downloaded from the BOP’s website, www.bop.gov, is attached as Exhibit B.

4.5 The BOP has calculated Mr. Johnson’s sentence according to Program Statement 5880.28 to reflect a potential award of 862 days of good time credit, and projected his release date as September 18, 2005, and his pre-release preparation date as March 18, 2005. A copy of this computation is attached as Exhibit C.

4.6 Were Mr. Johnson granted relief, he would be entitled to earn approximately 988 days of good time credit as provided for in 18 U.S.C. section 3624(b), rather than the 862 days provided for under BOP policy. This would make his projected release date approximately May 10, 2005, and his pre-release preparation date approximately November 10, 2004.

4.7 Mr. Johnson has sought relief through the BOP Administrative Remedy Process. The BOP has denied his request for relief. A copy of the denial is attached as Exhibit D.

V. STATEMENT OF LAW

5.1 Mr. Johnson, having been sentenced to a term of imprisonment of more than one year and a day, is entitled under 18 U.S.C. section 3624(b) to earn fifty-four days of good time credit per year.

5.2 Mr. Johnson is statutorily entitled to earn fifty-four days of credit for each year of

his term of imprisonment because the plain language of the statute provides that “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 . . . of up to 54 days at the end of each year of the prisoner’s term of imprisonment.” 18 U.S.C. § 3624(b).

5.3 The BOP’s interpretation cannot stand because it is contrary to the unambiguous intent of Congress that prisoners are eligible to earn fifty-four days for each year of the term of imprisonment. *See Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984); *see also United States v. LaBonte*, 520 U.S. 751, 762 n.6 (1997).

5.4 Even if the statute were ambiguous, the BOP’s interpretation is not entitled to deference because the rule of lenity must be used in construing an ambiguous penal statute. *See Bifulco v. United States*, 447 U.S. 381, 387 (1980).

5.5 The conduct of the respondent and his agents in promulgating a policy denying Mr. Henry eligibility to earn the statutory maximum credit of fifty-four—and barring good time of more than forty-seven days—deprives him of rights conferred by 18 U.S.C. section 3624(b), as well as the Due Process Clauses of the Fifth Amendment.

WHEREFORE, petitioner respectfully requests that this Court:

- (1) Grant the writ of habeas corpus;
- (2) Order the BOP to recalculate Mr. Johnson's projected release date in a manner reflecting that he is eligible to earn fifty-four days of good time credit for each year of his term of imprisonment.
- (3) Grant an expedited review of this petition.

RESPECTFULLY SUBMITTED this ____ day of _____, 2004,

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**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

John Henry Johnson, through his counsel, James Wyda, Federal Public Defender, and Sarah Gannett, Staff Attorney, hereby submits this memorandum of law in support of his petition for a writ of habeas corpus. Mr. Johnson requests an expedited review of his petition, because, if his sentence were correctly calculated, he would be eligible for halfway house placement in November 2004, and for release from custody in May 2005.

INTRODUCTION

Congress plainly stated in 18 U.S.C. section 3624(b) that federal prisoners serving more than a one-year “term of imprisonment” are to receive credit “beyond the time served” of up to fifty-four days at the end of each year of the “term of imprisonment.” “Term of imprisonment” is most easily understood to mean the sentence imposed in the final judgment. Despite this clear language, the Bureau of Prisons (“BOP”) is awarding only forty-seven days, meaning that Mr. Johnson will serve approximately three months more in prison than Congress intended.

The BOP made a fundamental error in its application of the statute: it administratively substituted “year served” for “term of imprisonment.” Rather than simply subtracting fifty-four days for each year of the term of imprisonment, the BOP resorted to a circular series of mathematical computations that even the BOP describes as “arithmetically complicated” to reach the bizarre conclusion that fifty-four days good time credit, on a sentence of one year and a day, equals forty-seven days good time credit. This result is foreclosed by the plain meaning of the statute and other basic principles of statutory construction. At least one court has so held in a published opinion. *See White v. Scibana*, 314 F. Supp. 2d 834 (W.D. Wis. 2004).

BACKGROUND

Mr. Johnson was convicted in the Middle District of North Carolina of various narcotics offenses, and received a sentence of 220 months incarceration. Mr. Johnson is currently serving that sentence at the Federal Prison Camp in Cumberland, Maryland. The BOP has advised Mr. Johnson that he will receive 862 days good time credit, based on a policy that allows a maximum of only forty-seven days for each year of the term of imprisonment. Mr. Johnson objected, filing a BP-9/Request for Administrative Remedy, which asked the Warden to award him fifty-four days of good time credit as required by 18 U.S.C. section 3624(b). The Warden denied his request, citing the BOP’s Program Statement 5880.28, which mandates a calculation that allows only forty-seven days of good time credit for each year of the term of imprisonment. Mr. Johnson filed regional and national appeals, but the BOP upheld the Warden’s decision. Mr. Johnson is left

with no recourse other than this legal action.¹

ARGUMENT

The statute governing the question of good time credit is 18 U.S.C. section 3624(b)(1). That statute provides that an inmate should receive fifty-four days of good time credit for each year of a term of imprisonment exceeding one year and one day:

[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 *fifty-four 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 ... [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.

18 U.S.C. § 3624(b)(1) (emphasis added). Contrary to the statute's use of "term of imprisonment" as the operative time period, the BOP has established a procedure under which a prisoner's good time credit is awarded not on the basis of the length of the sentence imposed, but rather on the number of days actually "served." See 28 C.F.R. § 523.20 (" . . . an inmate earns fifty-four days credit toward service of sentence (good time credit) *for each year served.*") (emphasis added). Indeed, in Program Statement 5880.28 (July 19, 1999) ("PS 5880.28"), which sets out the formula for calculating good time credit, the BOP dismisses the "term of imprisonment" completely: "It is essential to learn

¹ Even if Mr. Johnson had not exhausted his administrative remedies, because the BOP is bound by the incorrect policy, any effort at doing so would be futile. See *Booth v. Churner*, 532 U.S. 731, 735 (2001) (discussing futility exception); see also *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review*, 959 F.2d 742, 747-748 (9th Cir. 1991) ("Thus, where the agency's position on the question at issue 'appears already set,' and it is 'very likely' what the result of recourse to administrative remedies would be, such recourse would be futile and is not required."); *Maria v. McElroy*, 68 F. Supp. 2d 206, 218 (E.D.N.Y. 1999) ("Relief available to [petitioner] within the administrative process had been blocked by the Attorney General.").

that [good time credit] is not awarded on the basis of the length of the sentence imposed, but rather on the number of days actually served.” PS 5880.28 at 48. This results in the lower award of good time credit—forty-seven days—at issue in this case.

A look at the BOP’s procedure for calculating good time credit exposes the way in which the agency is torturing the plain language of the statute. Because it focuses on actual time served, and because an inmate who earns good time credit will not actually serve his full sentence, the BOP’s good time credit calculation must be based on a lengthy formula, described by the BOP as “arithmetically complicated.” *See* PS 5880.28 at 1-40 to 61B. For example, in the pristine case of a sentence of one year and one day, the BOP’s “short form” of its eight-step formula for calculating good time credit yields the following equations:

$$\begin{aligned} 365 \div 54 &= .148 \\ 366 \times .148 &= 54.168 \quad (366 + 54 = 420) \\ 366 - 54 &= 312 \times .148 = 46.176 \quad (312 + 46 = 358) \\ 366 - 46 &= 320 \times .148 = 47.36 \quad (320 + 47 = 367) \\ 366 - 47 &= 319 \times .148 = 47.212 \quad (319 + 47 = 366). \end{aligned}$$

See PS 5880.28 at 1-47. In contrast, the statute calls for fifty-four days at the end of each year of the term of imprisonment, yielding one simple, intuitive equation: $311 + 54 = 365$.

I. The Plain Meaning of 18 U.S.C. § 3624(b)(1) Provides That Mr. Johnson Should Receive Fifty-Four Days Credit Per Year On The “Term Of Imprisonment.”

The plain meaning of the good time credit statute requires the result Mr. Johnson seeks. The statute itself refers not to “time served” but to “term of imprisonment” as the basis for calculating good time credit. *See* 18 U.S.C. § 3624(b)(1) (“[A] prisoner . . . may receive credit . . . of up to fifty-four days at the end of each year of the prisoner’s *term of*

imprisonment . . .). It refers to “*serv*ing a term of imprisonment” only in defining those who are eligible to earn good time credit, and to the “end of each year” only in establishing when the good time credit vests. The BOP collapses all of these references. The result is confusion of what would otherwise be a simple matter.

The phrase “term of imprisonment” is one of the most-used phrases in the criminal law lexicon. The federal sentencing statutes consistently use “term of imprisonment” to refer to the judge’s sentence to imprisonment. *See, e.g.*, 18 U.S.C. § 3147 (“A term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.”); 18 U.S.C. § 3156(a)(3) (“The term ‘felony’ means an offense punishable by a maximum term of imprisonment of more than one year.”); 18 U.S.C. § 3582 (discussing “factors to be considered in imposing a term of imprisonment”); 18 U.S.C. § 3584(a) (“If multiple terms of imprisonment are imposed on a defendant at the same time . . .”); 28 U.S.C. § 994(b) (“If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than 25 percentum.”).

Indeed, the phrase “term of imprisonment” is used several times in section 3624, and in none of those instances is it used to mean “time served.” For example, the first sentence of section 3624(a) reads that “[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 . . .” This sentence makes sense only if “term of imprisonment” is another way of saying “sentence imposed.” If “term of imprisonment” means time actually served, there would be no need to subtract “time credited” to determine the release date, because

good conduct time already would have been taken into account. A similar example is found at section 3624(c), which limits the percentage of their sentence that prisoners may serve in community confinement.

Even the BOP ascribes this meaning to “term of imprisonment” as it is used at the outset of section 3624(b)(1) to establish eligibility for earning good time credit. *See* 18 U.S.C. § 3624(b)(1) (“[A] prisoner who is serving a term of imprisonment of more than 1 year . . .”). According to the BOP, good time credit is available when the *sentence* is more than a year. *See* Program Statement 5880.28 at 1-45 (“ . . . no GCT can be awarded to a *sentence* of one year or less”) (emphasis added). Identical words used in different parts of the same statute are presumed to have the same meaning. *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995). Here, the identical words are used within a sentence of each other and within the same *subsection*. Thus, the only sensible definition for “term of imprisonment”—in the context of section 3624 or otherwise—is “sentence imposed.”

When a statute speaks with clarity to an issue, judicial inquiry into the statute’s meaning is, in all but the most extraordinary circumstances, finished. *See Rubin v. United States*, 449 U.S. 424, 430 (1981); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989) (“Plain meaning of legislation should be conclusive, except in rare cases in which literal application of statute will produce results demonstrably at odds with intention of its drafters.”). Here, the statute is clear. It states that prisoners may receive fifty-four days good time credit for every year of their “term of imprisonment.” 18 U.S.C. 3624(b)(1). The notion of “time served” is completely absent. *Cf. Russello v. United*

States, 464 U.S. 16, 23 (1983) (“The short answer is that Congress did not write the statute that way) (internal quotation marks and citations omitted).

Where “the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).² An agency may not ignore the obvious statutory meaning in favor of its own preferred definition. *See Immigration & Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (holding that the “ordinary and obvious meaning is not to be lightly discounted”); *Orca Bay Seafoods v. Northwest Truck Sales, Inc.*, 32 F.3d 433 (9th Cir. 1994) (holding that, regardless of policy justification, Secretary of Transportation may not exempt certain vehicles from clear statutory definition). Indeed, if the statute is unambiguous, no deference whatsoever is owed to the agency implementing it. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125-26 (2000); *see also United States v. LaBonte*, 520 U.S. 751, 762 n.6 (1997).

In substituting the concept of time “served” for “term of imprisonment,” the BOP has altered the plain and unambiguous meaning of section 3624(b). Although the difference in sentence calculation caused by the change in meaning is not

² The last sentence of Section 3624(b)(1), which provides that “[c]redit for the last year or portion of the year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence,” does not create any ambiguity. *But see Pacheco-Camacho v. Hood*, 272 F.3d 1266 (9th Cir. 2001) (finding the phrase “term of imprisonment,” as used in section 3624, ambiguous). The provision relates to the point at which good time will be credited to an inmate and recognizes that federal sentences are not imposed solely in full-year increments. The provision simply states that sentences will be “prorated” for any portion of a year in the sentence imposed. Notably, Congress specifically directed that any prorating be based on the “term of imprisonment” imposed by the court, not the time served by the inmate.

dramatic—approximately seven days per year—each day of incarceration is significant to the individual affected.³ This Court should require the BOP to adhere to the plain meaning of the statute and award Mr. Johnson the full fifty-four days of good time credit per year to which he is entitled.

II. The Plain Meaning Of The Statute Is Supported By The Legislative History, Which Demonstrates That Congress Specifically Intended To Reject The Complexities Of Calculating Good Time Credit Only For Actual Time Served Rather Than Basing Such Credit On The “Term Of Imprisonment.”

The history of the good time statute bears out that the apparent plain meaning of section 3624(b)(1) was also the intended meaning. Congress consciously amended the statute to calculate good time with reference to the judge’s sentence—the “term of imprisonment.” When Congress amends a statute, courts must assume that Congress intends its amendment to have real and substantial effect. *Stone v. INS*, 514 U.S. 386, 397 (1995). This basic rule of construction, approved by the Supreme Court, further demonstrates that the statute is not ambiguous.

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 served in prison, but from the term of the sentence imposed in increments dependent upon the length of the term.

In 1948, Congress adopted new statutory language. Good time was now “to be

³ The difference may be meaningful on a broader scale, as well. One author has suggested that correcting the BOP’s good time credit calculation could save taxpayers over \$554 million in incarceration expenses. See Stephen R. Sady, “Misinterpretation of the Federal Good Time Statute Costs Prisoners Seven Days Every Year”, *The Champion*, Sept./Oct. 2002 at 13.

credited as earned and computed monthly.” The change was not intended to diminish the amount of good time credit a prisoner could earn, but rather to address when the good time credit vested. Nonetheless, it “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.” H.R. Rep. 86-935 (Aug. 18, 1959), *reprinted in* 1959 U.S.C.C.A.N. at 2519. “The effect of this interpretation [was] 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. Rep. 86-935 (Aug. 18, 1959), *reprinted in* 1959 U.S.C.C.A.N. at 2519. To remedy this problem, Congress later deleted the “time served” language and returned to the methodology of crediting against the sentence, not time served. *See* H.R. Rep. 86-935 (Aug. 18, 1959), *reprinted in* 1959 U.S.C.C.A.N. at 2519.

In the current good time statute, Congress used the pre-1948 and post-1959 formulation, eschewing language such as “credited as earned and computed monthly” in favor of the simpler “term of imprisonment.” Congress also clarified its intent numerically, by using fifty-four days, which is fifteen percent 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); *see also* 140 Cong. Rec. S12,349 (1994) (“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.”) (statement of Sen. Biden). Thus, Congress specifically considered the loss of good time resulting from calculating against time actually served and chose the simpler method.

Contrary to congressional intent and the plain meaning of “term of imprisonment,” the BOP explicitly rejects crediting good time against the sentence imposed. Instead, and without authority, the BOP, both in its regulations and its program statement, substituted for “term of imprisonment” the phrase “for each year served.” *See* 28 C.F.R. § 523.20(a); PS 5880.28 at 1-48. Although the “eighty-five percent rule” pronounced by Senator Biden has been universally recognized by federal lawyers and sentencing judges as the measure of good time, the rule is not honored. No federal prisoner, no matter how virtuous, ever serves less than 87.2% of the sentence imposed.

The BOP’s formulation cannot be reconciled with the clear Congressional intent that good time credit be as easily calculated as a fifteen-percent tip. *See* S. Rep. 98-225, *reprinted in* 1984 U.S.C.C.A.N. 3329 (describing section 3624 as creating an “easily determined rate”). Congress clearly showed its intent to require service of eighty-five percent of the sentence by the good time credit number given in the statute: fifty-four is fifteen percent of 365. Indeed, in an earlier version of the good time statute, Congress used thirty-six days, “approximately 10%.” *Id.* at 3329-30. The final version simply added five percent to the maximum term. *See id.* at 3711 (“Amendment No. 130: Deletes

‘thirty-six’ as proposed by the House, and inserts in lieu thereof ‘fifty-four’ as proposed by the Senate *which increases ‘good time’ that accrues from 10 percent to 15 percent.*”) (emphasis added). The BOP’s interpretation thus controverts legislative history as well as plain meaning. The Court should require that it be abandoned.

3. Even If The Statute Were Ambiguous, Supreme Court Authority Requires Application Of The Rule of Lenity To This Penal Statute, Instead Of Deference To The Agency’s Interpretation.

The Ninth Circuit found the good time credit statute to be ambiguous, and approved the BOP’s approach to awarding credit under the *Chevron* rule of deference to agency interpretation of ambiguous statutes. *See Pacheco-Camacho v. Hood*, 272 F.3d 1266 (9th Cir. 2001).⁴ In finding the statute ambiguous, the court conducted only a cursory statutory construction analysis. *Cf. White v. Scibana*, 314 F. Supp. 2d 834, 838-41 (W.D. Wis. 2004). Nonetheless, even assuming that the statute is ambiguous, the rule of lenity, not the *Chevron* rule, must be used in construing it, due to its penal nature. *See Bifulco v. United States*, 447 U.S. 381, 387 (1980).

The rule of lenity applies where reasonable doubt persists about a penal statute’s intended scope, even after resort to the language and structure, legislative history, and motivating policies of the statute. *See United States v. R.L.C.*, 503 U.S. 291, 305-06 (1992); *Bifulco*, 447 U.S. at 387. The rule “applies not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose.” *Bifulco*

⁴ The Ninth Circuit’s finding of ambiguity itself was erroneous. *See supra* p. 7 n.2.

447 U.S. at 387.⁵ Under the rule of lenity, of course, courts “[may] not interpret a federal criminal statute so as to increase the penalty that it places on an individual” *Id.*

The Sixth Circuit has applied the rule of lenity in declining to defer to the Parole Commission’s interpretation of a parole revocation statute. *See Dolfi v. Pontesso*, 156 F.3d 696, 700 (6th Cir. 1998). The court stated that the Commission’s invocation of *Chevron* “overlook[s] a crucial distinction between criminal and civil statutes.” *Dolfi*, 156 F.3d at 700. In criminal statutes, *Chevron* does not apply because the judicial branch, not the executive branch, is entrusted with interpretation of the criminal code. *See id.* at 700 (“Unlike environmental regulation or occupational safety, criminal law and the interpretation of criminal statutes is the bread and butter of the work of federal courts.”) (citing *Crandon v. United States*, 494 U.S. 152, 177-78 (1990)).

Interpretation of Section 3624(b) does not involve any executive expertise to which the courts should defer. Deference to the BOP’s administrative construction of an the good time statute “would turn the normal construction of criminal statutes upside down, replacing the doctrine of lenity with the doctrine of severity.” *Crandon v. United States*, 494 U.S. 152, 177-78 (1990) (holding, in the context of construing a provision prohibiting supplemental compensation to government employees, that the executive branch’s construction of a penal statute is not deserving of even persuasive effect)

⁵ The credit for good time law is a penal statute located in the criminal sentences section of Title 18. The Supreme Court previously has found that good time statutes are penal in nature in the contexts of *ex post facto* and habeas corpus litigation. *See Lynce v. Mathis*, 519 U.S. 433 (1997); *Weaver v. Graham*, 450 U.S. 24 (1981); *Preiser v. Rodriguez*, 411 U.S. 475 (1973). Under this precedent, the federal good time law is a penal statute to which the rule of lenity applies.

(Scalia, J., concurring). The Court should not approve the BOP's interpretation.

CONCLUSION

For all the reasons set forth herein, Mr. Johnson respectfully requests that the Court grant his petition for writ of habeas corpus and direct the Federal Bureau of Prisons to recalculate his sentence in a manner reflecting that he is eligible to earn fifty-four days of good time credit for each year of his term of imprisonment.

RESPECTFULLY SUBMITTED this ____ day of _____, 2004,

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