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Is Supervised Release Tolled Retrospective to the Start of an Unrelated Detention if the Defendant Is Credited with Time Served upon Sentencing for the New Offense?

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CASE AT A GLANCE

The district court sentenced Jason Mont for violating his supervised release conditions after a state conviction and sentence that credited him for time in pretrial detention served while he was on supervised release. Mont challenges the court's exercise of jurisdiction, arguing that 18 U.S.C. § 3624(e) does not permit the court to reach backward to find that supervised release was tolled once he received credit for his pretrial detention at sentencing. Petitioner and respondent disagree about the interpretation of the language and structure of Section 3624(e). While the government relies heavily on the purpose of supervised release, petitioner notes that the district court could have prevented its jurisdiction from lapsing had it issued a summons or warrant prior to the end of his supervised release, as indicated in 18 U.S.C. § 3583(i). Such summons or warrant would have allowed the court to hold the violations hearing even after supervised release ended.

Mont v. United States
Docket No. 17-8995

Argument Date: February 26, 2019
From: The Sixth Circuit

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INTRODUCTION

Federal courts impose supervised release upon a prison sentence in almost all cases.[1] In this case, the Court is asked to interpret one sentence in 18 U.S.C. § 3624(e) to determine when a term of supervised release might be paused.

ISSUES

Does 18 U.S.C. § 3624(e) toll a period of supervised release while petitioner is held in pretrial custody awaiting trial on a state offense when the time in detention is later credited to his sentence?

FACTS

In 2005, Jason Mont was sentenced to ten years in federal prison after being convicted on drug charges. Subsequent sentence reductions led to his release on March 6, 2012, when his five-year supervised release started. Almost four years into his supervised release term, in January 2016, Mont's probation officer informed the district court that Mont had violated his release conditions by testing positive for drugs and attempting to replace his urine sample with another liquid. In addition, state drug charges had been filed against him. On June 1, 2016, state authorities arrested Mont for cocaine trafficking. He was held pretrial at a local jail. On October 6, 2016, he pled guilty to state charges in exchange for a six-year prison sentence. Mont conceded that in light of his state conviction, he had violated his supervised release conditions and requested a hearing. The district court judge wanted to hold the violation hearing after the state sentencing, which delayed it for months. The court indicated later that it issued a summons in November 2016, in conjunction with a then-planned hearing on the supervised release.

The state court sentenced Mont to the agreed-upon six-year term on March 21, 2017, and credited the entire presentence time to that sentence. On March 30, 2017, the federal court issued a warrant for Mont. The hearing on the supervised release violation finally occurred on June 28, 2017. At that point Mont argued that the court lacked jurisdiction because the supervision period had expired on March 6, 2017. The district court summarily rejected the argument. According to the district court, under 18 U.S.C. § 3583(i), its November summons allowed it to retain the power to sanction Mont for the supervised release violation even though the term had expired. It then sentenced him to 42 months imprisonment, to be served consecutive to his state sentence.

1. In FY 2017, 94 percent of all nonimmigration cases in which the offender was sentenced to imprisonment included supervised release. U.S. Sentencing Commission, *Overview of Federal Criminal Cases, Fiscal Year 2017* (June 2018), at 6, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/FY17_Overview_Federal_Criminal_Cases.pdf.

The Sixth Circuit affirmed in an unpublished opinion, available in the Joint Appendix, though on different grounds as it could not find any documentation on the record that the summons was ever issued. It relied on a circuit precedent, *U.S. v. Goins,* 516 F.3d 416 (6th Cir.), cert. denied, 555 U.S. 847 (2008), finding that under 18 U.S.C. § 3624(e) supervised release paused when the defendant was incarcerated based on an indictment that resulted in a conviction and the subsequent sentence credited the defendant with time served. Therefore, the court had jurisdiction over the defendant when it issued the warrant on March 30, 2017, and at the time of the hearing, even without resorting to Section 3583(i). The U.S. Supreme Court granted the petition for *certiorari* on November 2, 2018.

CASE ANALYSIS

At issue in this case is the interpretation of one sentence in a supervised release provision, 18 U.S.C. § 3624(e). Section 3624 is entitled "Release of a prisoner"; subsection (e) is called "Supervision after release." The sentence at issue notes that "[a] term of supervised release does not run during any period in which the person *is imprisoned in connection with a conviction* for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days" (emphasis added). Appellate courts to consider the issue have split on the question whether detention tolls supervised release if the supervisee is later convicted and sentenced, with credit given for the time in custody. Two federal courts—*United States v. Marsh,* 829 F.3d 705 (D.C. Cir. 2016), and *United States v. Morales-Alejo,* 193 F.3d 1102 (9th Cir. 1999)—have not allowed for such a backward-looking tolling while four others—*Goins, United States v. Ide,* 624 F.3d 666 (4th Cir. 2010), *United States v. Johnson,* 581 F.3d 1310 (11th Cir. 2009), *United States v. Molina-Gazca,* 571 F.3d 470 (5th Cir. 2009)—have found supervised release to pause under such circumstances during pretrial detention.

Petitioner Mont argues that the district court lacked jurisdiction to revoke his supervised release because its term had already ended at the time of the revocation hearing. Since the record does not reflect that the district court issued a summons, Section 3583(i) is inapplicable. That provision, entitled "Delayed revocation," extends the court's power to revoke supervised release and sentence the offender for any violation of a condition of the release "beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration, if before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." Petitioner concedes that had the summons been issued in November 2016, the district court would have had jurisdiction to revoke his supervised release and sentence him accordingly.

Section 3624(e), on the other hand, does not extend the court's jurisdiction in light of the language, structure, and legislative history of the provision. According to petitioner, the appellate court's "backflip," therefore, inappropriately tolled supervised release during pretrial detention when the defendant is later credited with time served at sentencing. Petitioner relies on *United States v. Johnson,* 529 U.S. 53 (2000), in which the Supreme Court interpreted Section 3624(e) in a strictly temporal manner. Even though Roy Lee Johnson served an excessively long sentence, the Court held that under the statute supervised release follows upon imprisonment, rather than some "fictitious or constructive earlier time." Yet, the Sixth Circuit in *Goins* restricted the *Johnson* approach to one sentence in Section 3624(e) and otherwise adopted the backward-looking tolling approach. It did so even though the present tense used throughout the statute further supports a linear interpretation. The D.C. Circuit in *United States v. Marsh,* 829 F.3d 705 (D.C. Cir. 2016), focused on the word *is* whose present tense removes the possibility of a backward-looking method of statutory tolling. After all, the *Marsh* court found the present tense to include the future but not the past.

Petitioner also cites rules of statutory interpretation, when applied to the terms in the statute, in support of his argument. Section 3624(e)'s use of the term *imprisonment* indicates that Congress contemplated imprisonment upon conviction rather than pretrial detention, even if later credited to a prison term. In this argument, petitioner finds support in *United States v. Morales-Alejo,* 193 F.3d 1102 (9th Cir. 1999). The phrase *in connection with* also prevents the application presented, despite the finding in *Goins* that pretrial detention is connected to a conviction when it is later credited to the sentence. Petitioner, on the other hand, deems the term connected solely to imprisonment for a supervised release violation.

Petitioner sees a structural distinction between the court's power to revoke supervised release and sentence the offender for any violation of a condition of the release between Section 3583 and Section 3624. He views Section 3583(i) as governing the court and providing it with the power to extend jurisdiction while Section 3624(e) is a directive to the Bureau of Prisons, instructing it how to calculate supervised release. The district court could have easily established jurisdiction had it issued a summons or warrant prior to March 6, 2017. It is, therefore, unnecessary to strain the interpretation of Section 3624(e) when a judge could extend the time for revoking supervised release under Section 3583(i) by issuing a summons or warrant. The advantage of this approach would be to provide notice and assure certainty.

In its reply, the government focuses extensively on the purpose of supervised release and the impact of detention on these goals. It argues that starting June 1, 2016, Mont's detention interfered with his liberty and ended his transition into the community. Since the probation officer could no longer effectively exercise supervision, supervised release terminated at that point. The government concedes that even if that interruption was not apparent on June 1, it became obvious in October when Mont pled guilty to the state charges. The supervised release tolls no later than when the state court accepted the guilty plea. As the term *conviction* covers both the finding of guilt as well as the entry of a final judgment, with the former, custody changes from pretrial detention to being a component of the penalty.

The purposes of supervised release further support this analysis. The government notes that lengthy incarceration during supervised release after all ends the transition into the community as it renders voluntary and affirmative compliance with the terms of supervised release impossible and thwarts meaningful supervision. That will be the case whether the sentence is served before or after a conviction. Either way the prison term interrupts the supervised release. The offender should not be credited for

supervised release time while he is in prison. The government notes prohibition against such double counting is reflected in other statutes.

The government also finds petitioner's language-based arguments unconvincing. First, the phrase *in connection with a conviction* in Section 3624(e) is to be read broadly and is not restricted to imprisonment that occurs "after" a conviction but rather applies to any imprisonment related to a conviction. After all, any time a custodial term is credited against post-conviction imprisonment, it would be considered *in connection with* that conviction. Since the state court credited Mont with the time he served in pretrial detention, that incarcerative period would retrospectively be deemed imprisonment *in connection with a conviction.*

Second, use of the present tense in Section 3624(e) does not invalidate this interpretation. The tolling provision applies to imprisonment either when it begins or when its connection to a conviction becomes obvious. Third, as the federal code frequently uses the term *imprisonment* to denote any form of custody or detention, including pretrial detention, the government argues there is no reason to construe it narrowly here. The term does not apply only to post-sentence custody.

The government concludes that the district court had authority to sentence Mont for violation of the conditions of his supervised release because either his pretrial or, at a minimum, his post-plea incarceration tolled the term of his supervised release.

SIGNIFICANCE

In 2015, Mont was one of about 115,000 federal offenders on supervised release, who served an average time of almost three years under supervision.[2] Mont's failure to complete his term successfully is, unfortunately, not unusual, as the U.S. Sentencing Commission's data indicate. Of federal inmates released into the community in 2005, half were rearrested, a third reconvicted, and a quarter re-incarcerated within eight years. Among the most common serious new offenses was drug trafficking.[3] Even though many of the new offenses occur shortly after release, not all of them do. Mont, in fact, stayed out of trouble longer than many of those who reoffend. New offenses and technical violations of supervised release may both lead to the revocation of supervised release. According to the Sentencing Commission, about a third of those under supervision end up having their terms revoked and are being sent back to prison.[4]

Yet, only half the circuits have confronted the question at issue here, whether to apply Section 3624(e) in a backward-looking way to toll supervised release. That may indicate the limited practical applicability of the issue. Perhaps it is that the timeline, which created part of the challenge in *Mont,* does not occur overly frequently. Perhaps federal judges are inclined to issue a summons or warrant while supervised release is running, as the district court here asserted it had done. In light of that factual question, which the Sixth Circuit resolved against the district court, the government is asking for a remand should the Supreme Court find for Mont.

The government's brief, as one would expect, is well written and cogently argued, but one wonders about the extensive discussion of the purpose of supervised release in what seems like a question of statutory construction. Most persuasive may be petitioner's structural argument. Section 3624 seems to focus on the Bureau of Prisons rather than federal courts while Section 3583 directly addresses the district court, empowering it to adjudicate violations after expiration of the supervised release as long as it issued a warrant or summons during the supervised release period. In the end, a victory for Mont would allow him to be released after his six-year state sentence without having to return to federal prison. It would vindicate the D.C. and Ninth Circuits' interpretation and likely head off other questions such as how to address lengthy pretrial detention that interrupts supervised release but is ultimately not credited to a future sentence. Yet, systemically, little change is likely except that some district courts may come to issue a summons or warrant more proactively, with probation officers watching the clock even more closely.

Besides *Mont,* the Court has another supervised release case on its argument schedule for February 26. *United States v. Haymond* (Docket No. 17-8995) addresses the constitutionality of a federal law that mandates a five-year prison term for sex offenders who violate the terms of their supervised release. That case, which has attracted substantially more attention than *Mont* and has garnered a number of amicus briefs, raises Sixth Amendment questions in the context of a sentence revocation. The stakes are substantially higher than in *Mont,* and the question arises whether the Court plans to take on supervised release more systematically, especially as *Mont* was an unpublished opinion, with an at least ambiguous factual issue that could have resolved the question at issue.

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2. The Pew Charitable Trusts, Issue Brief: *Number of Offenders on Federal Supervised Release Hits All-Time High* (Jan. 24, 2017), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/01/number-of-offenders-on-federal-supervised-release-hits-all-time-high.

3. U.S. Sentencing Commission, *Recidivism Among Federal Offenders: A Comprehensive Overview* (March 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf.

4. U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (July 2010), at 62–68, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100722_Supervised_Release.pdf.