

09-5201 BARBER V. THOMAS

DECISION BELOW:533 F.3d 800

LOWER COURT CASE NUMBER: 08-35940, 08-35945

QUESTIONS PRESENTED:

The federal good time credit (GTC) statute provides for credits "up to 54 days at the end of each year of the prisoner's term of imprisonment." Throughout federal sentencing statutes, and elsewhere in the same sentence, "term of imprisonment" means the sentence imposed. However, the Bureau of Prisons (BOP) interprets "term of imprisonment" as unambiguously meaning time served. For each year of a sentence imposed, the BOP interpretation results in seven fewer days of available credits. The first question presented is:

Does "term of imprisonment" in Section 212(a)(2) of the Sentencing Reform Act, enacting 18 U.S.C. § 3624(b), unambiguously require the computation of good time credits on the basis of the sentence imposed?

The Circuits, using a variety of rationales, have rejected the BOP's claim that the statute was unambiguous, but deferred to the BOP interpretation under Chevron based on "term of imprisonment" being ambiguous. In this litigation, the BOP has conceded that the regulation implementing the GTC statute, and previously accorded deference, was promulgated in violation of the Administrative Procedure Act. Nevertheless, the Ninth Circuit affirmed the BOP rule under Skidmore. The second question presented is:

If "term of imprisonment" in the federal good time credit statute is ambiguous, does the rule of lenity and the deference appropriate to the United States Sentencing Commission require that good time credits be awarded based on the sentence imposed?

CERT. GRANTED 11/30/2009