

20-6214

No.

IN THE

Supreme Court of the United States

JOHN JAY POWERS

Petitioner(s)

v.

HERMAN QUAY. WARDEN.

Respondent(s)

On Petition For Writ Of Certiorari

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John Jay Powers
03220-028
USP-Allenwood
POB 3000
White Deer, PA 17887

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QUESTION(S) PRESENTED

Does the General Savings Statute, 1 U.S.C. §109, apply to the First Step Act's amendment to 18 U.S.C. §3624(b) so that penalties of the loss of good time credits per the former version of the statute can be maintained?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A : Unpublished opinion. United States Court of Appeals
for the Third Circuit. No. 20-2339

APPENDIX B : Unpublished opinion. United States District Court.
Middle District of Pennsylvania, No. 4:20-cv-00138

APPENDIX C : Appellant's Motion for Summary Judgment. No 20-2339

APPENDIX D : Appellant's Informal Brief (also considered by the
Third Circuit), No. 20-2339

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Barber v. Thomas, 560 U.S. 474.....	5
Warden v. Marrero, 417 U.S. 653.....	5
Dorsev v. United States, 567 U.S. 260.....	6

STATUTES AND RULES

18 U.S.C. §3624(b).....	5. 6
1 U.S.C. §109.....	5. 6

OTHER

Constitution of the United States. Article 1, §9, cl. 3.....5

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-05-2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I., §9, cl 3. Constitution of the United States
(Ex Post Facto Clause)

18 U.S.C. §3624(b)(former and as amended by the First Step Act
of 2018)

1 U.S.C. §109 (the General Savings Statute)

STATEMENT OF THE CASE

Petitioner exhausted his administrative remedies and filed a section 2241 habeas petition in the district court. The issues were the same as those presented here. Neither the FBOP nor the district court addressed the issues: instead, the matter was rather obviously avoided. The district court held that the First Step Act of 2018 did not "repeal" 18 U.S.C. §3624(b) and that the forfeited good time credits previously incurred could be maintained. The district court did not mention 1 U.S.C. §109 (the General Savings Statute) and its application. Petitioner appealed to the Third Circuit and the Third Circuit affirmed (while failing to answer the questions about whether the First Step Act repealed 18 U.S.C. §3624(b) within the meaning of the General Savings Statute. 1 U.S.C. §109.) Petitioner now brings the same question to this Court.

REASONS FOR GRANTING THE PETITION

1. Neither the Federal Bureau of Prisons, nor the District Court, nor the Court of Appeals would answer the question presented: Does the General Savings Statute apply to the amendment to 18 U.S.C. §3624(b) under the First Step Act of 2018? Petitioner answers in the affirmative.
2. Petitioner's question involves an ex post facto analysis pursuant to Article I, §9, cl 3 of the Constitution of the United States. To wit, the prior 18 U.S.C. §3624(b) only allowed for 47 days of good conduct credits to be gained or lost. *Barber v. Thomas*, 560 U.S. 474, 130 S. Ct. 2499, 177 L. Ed. 2d 1, 2010 U.S. LEXIS 4717 (2010). The amended and retroactive statute has allowed the Federal Bureau of Prisons to retroactively disallow 54 days per year. This has been done to petitioner.
3. Petitioner contends that the amendments to 18 U.S.C. §3624(b) constitute a "repeal" within the meaning of the General Savings Statute because the word "repeal" applies when a new statute diminishes the penalties that the older statute set forth. Case law also makes clear that penalties are incurred under an older statute when an offender becomes subject to them. The quantum of good time credits available to be given or taken away is a central factor of sentencing. *Warden v. Marrero*, 417 U.S. 653, 41 L. Ed 2d 383, 94 S. Ct. 2532 (1974)(penalties incurred under the older statute when an offender becomes subject to them).

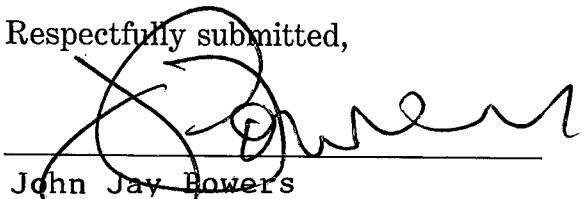
4. So, in terms of good time credits available, petitioner is contending that where he was only eligible for 47 days per year under the former version of 18 U.S.C. §3624(b), he should now be eligible for 54 days per year under the retroactive and amended 18 U.S.C. §3624(b). The additional 7 days should apply to each year of the sentence imposed by the court, no matter if there were penalties that were incurred prior to the effective date of the First Step Act of 2018, which was 19 July 2019. This is significant under Dorsey v. United States, 567 U.S. 260 (2012) and the issue will need to be addressed by this Court in any event.

CONCLUSION

The writ of certiorari should issue accordingly.

The petition for a writ of certiorari should be granted.

Respectfully submitted,


John Jay Powers

Date: 21 OCT 2020