

24-6464

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 16 2025

OFFICE OF THE CLERK

Zachary Stinson, pro-se

v.

Felipe Martinez, jr.
Warden, FCI Oakdale

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS BEFORE JUDGEMENT

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGEMENT

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QUESTIONS PRESENTED

The First Step Act of 2018 established incentives for federal prisoners to participate in evidence-based recidivism reduction programs and productive activities. Among these incentives is a new type of sentencing time credit that is to be used to reduce a prisoner's term of imprisonment and increase the time a prisoner spends in prerelease custody, which includes placement in a residential reentry center or on home confinement. This case raises two questions regarding the time credit provisions of the First Step Act.

1. At what point in a federal prisoner's sentence do they begin and end earning time credits for their participation in programs and productive activities?

2. Is the Bureau of Prisons obligated to consider time credits that a prisoner will undoubtedly earn in the future when making prerelease custody placement determinations?

LIST OF PARTIES

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

RELATED CASES

Stinson v. Matrinez, No. 2:23-cv-00751, U.S. District Court for the Western District of Louisiana. Judgement entered on December 3, 2024.

Stinson v. Martinez, No. 24-30793, U.S. Court of Appeals for the Fifth Circuit. Case pending.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGEMENT

Zachary Stinson respectfully prays that a writ of certiorari issue before judgement in the case below.

OPINIONS BELOW

Judgement has not yet been entered in the United States court of appeal in case No. 24-30793.

The opinion of the United States district court appears at APPENDIX A to the petition and is unpublished.

JURISDICTION

The date on which the United States court of appeals docketed my case was December 23, 2024. Judgement has not yet been entered for case No. 24-30793.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3621(h)- Appears in APPENDIX B Section I to the petition.

18 U.S.C. § 3624(g)- Appears in APPENDIX B Section II to the petition.

18 U.S.C. § 3632(d)- Appears in APPENDIX B Section III to the petition.

STATEMENT OF THE CASE

On December 18, 2019 Zachary Stinson was sentenced to 132 months in federal prison to be followed by five years of supervised release in the Southern District of Ohio after having pled guilty to two counts of violating 18 U.S.C. § 2423(b): Transportation of Minors, Travel with Intent to Engage in Illicit Sexual Activity. Stinson has been in exclusive federal custody since the imposition of his sentence. He is currently serving the custodial portion of his sentence at FCI Oakdale in Louisiana. Throughout Stinson's incarceration he has maintained good behavior and has actively participated in a variety of evidence-based recidivism reduction programs and productive activities. Stinson has never refused to participate in any activities that have been recommended to him by staff. Stinson is currently projected to be released from custody to begin his term of supervised release on July 15, 2026, and is scheduled to be placed in prerelease custody at Alvis House residential reentry center in Columbus, Ohio on May 7, 2025.

Under the First Step Act of 2018, Stinson is entitled to earn sentencing credits for his participation in evidence-based recidivism reduction [EBRR] programs or productive activities throughout his entire term of imprisonment. The bureau of Prisons, however, has severely limited the availability for prisoners to earn time credits. In Stinson's case, The BOP has denied time credits for participation in activities that occurred between the commencement of Stinson's sentence (December 18, 2019) and his arrival at FCI Oakdale (November 5, 2020) by relying on BOP regulation 28 C.F.R. §523.42(a). The bureau has also improperly projected Stinson's ability to earn time credits for his participation to cease upon his placement in prerelease custody instead of his release from

custody. Stinson believes that the BOP interpretation of the time credit provisions of the FSA is not at all consistent with the language of the statutes involved nor the clear intent of Congress.

Stinson filed a habeas petition in the Western District of Louisiana on June 5, 2023 pursuant to 28 U.S.C. 2241 after having exhausted his administrative remedies through the BOP grievance program. Stinson's petition was fully briefed on October 19, 2023, yet sat without action for over a year until December 3, 2024 when the court finally denied the petition with prejudice. Stinson maintains that the district court erred in its denial of Stinson's claims.

Regarding Stinson's challenge to 28 C.F.R. §523.42(a), the district court erroneously held that Congress did not require the BOP to begin to award time credits at any particular point in a prisoners sentence, but rather only told the BOP when they could not award time credits. The decision of the district court in this case is contrary to every other district court to squarely address the issue. See Anderson v. FPC Yankton, No. 4:23-cv-(04136, 2024 U.S. Dist. LEXIS 216605, at *5 (D. S.D. Nov. 26, 2024)(Collecting cases where BOP regulation was found to run afoul of the plain language of the FSA). Stinson objected to the recommendation of thje magistrate, but the district court adopted the magistrate's report and denied Stinson's petition with prejudice.

Regarding Stinson's claim regarding the ability for prisoners to earn time credits for their entire sentence, to include while in prerelease custody, the district court failed to address the issue in any meaningful way. The only reference to Stinson's claim is a footnote in the magistrate's report that describes a calculation the was given to Stinson by the BOP as an error because it included time credits Stinson would earn for the full remainder of his sentence instead of stopping earnings upon his

placement in prerelease custody.

After the district court's denial of Stinson's habeas petition, he timely filed notice of appeal and paid the requisite docketing fee. The district court informed Stinson that his appeal was docketed on December 23, 2024. Stinson now files this petition for a writ of certiorari before judgement to ensure that the questions raised are properly addressed and that the policies of the Bureau of Prisons as well as the ruling of the courts below do not escape review. Sup. Ct. R. 11 and 28 U.S.C. 2101(e) allow this court to issue a writ of certiorari before judgement when addressing an issue that is of high public importance which requires immediate review by this court. This case is such that review before judgement is entered in the court of appeals is proper.

REASONS FOR GRANTING THE WRIT

1. taking this case before judgement is important because it raises issues of first impression to this court.

Congress enacted the First Step Act on December 21, 2018. This major legislation was intended to reform prior sentencing law and promote prisoner rehabilitation through initiatives aimed at reducing risk of recidivism. The FSA created incentives for prisoners who engage in beneficial programs or productive activities. Among the incentives created by the FSA is a new type of sentencing time credit that eligible prisoners earn through their participation in programs and activities. The credits earned by prisoners are used to reduce a prisoner's term of imprisonment and to increase the time they are to spend in prerelease custody (home confinement or placement in a residential reentry center).

In the six years since the enactment of the First Step Act, the Bureau of Prisons' implementation of the required incentives overall has been shaky at best. This case is limited to the time credit provisions of the FSA and the Bureau's ongoing efforts to limit time credit availability for all prisoners in their custody. To Stinson's knowledge there has not been a challenge of the BOP's interpretation of the FSA to reach this court. Having an expeditious resolution to the questions raised in this case will provide clarity to the lower courts that have been struggling to consistently apply the FSA to the cases before them. Prisoners serving their sentences in different districts across the country are experiencing different results regarding the execution of their sentences under the rules of the FSA. Uniformity among the courts is important to ensure that prisoners' sentences are being properly executed, regardless of the district in which they are serving their sentence.

Sup. Ct. R. 10(c) indicates that cases involving important questions of federal law that have not been, but should be, settled by this court are of the character for this Court's consideration.

2. Taking this case before judgement is important because the questions raised carry significant federal importance that reach far beyond the parties in this case and require immediate resolution.

The time credit provisions are available to tens of thousands of federal prisoners and an undetermined number of D.C. prisoners in the custody of the BOP. (D.C. prisoner eligibility is currently being litigated in the Fifth Circuit in Neal v. Martinez, 2:23-cv-00853, appeal filed). Both questions raised in this case are equally applicable to the vast majority of eligible prisoners. The majority of federal prisoners are not

afforded the opportunity to self surrender at the institution they will be serving their sentence, so 28 C.F.R. 523.42(a) limits the availability of time credits for most eligible prisoners. The second question raised in this case applies to all eligible prisoners. The BOP's insistence that prisoners stop earning time credits upon their placement in prerelease custody limits time credits for every prisoner who is participating in programming while housed at a residential reentry center. As the time credits are used to increase the time spent in residential settings, this abuse of the BOP's discretion severely limits the required benefits of the FSA.

As long as the policies of the BOP are allowed to remain in place tens of thousands of prisoners are being harmed. The families of these prisoners also have a stake in their loved ones' sentences being properly administered. In fact, Stinson argues that society as a whole has an interest in the proper execution of federal prison sentences.

Many prisoners who have already been affected by these unlawful policies are serving prison terms that are too short in duration to properly challenge the BOP in this court. In the instant case, Stinson began pursuing relief through the BOP administrative remedy program in October of 2022. While Stinson has been diligent in his pursuit, it has still taken until December of 2024 before he reached the appellate level. Stinson now has a placement date for a residential reentry center of May 7, 2025. It is extremely unlikely that without immediate resolution by this Court Stinson will realize any relief from the policies that have limited his time credit availability. Stinson believes that the erroneous interpretation by the BOP and the improper denial of relief should not be allowed to escape review by this Court. Sup. Ct. R. 11 and 28 U.S.C. 2101(e) contemplate a case such as this requiring immediate acceptance by this Court.

3. The lower court erred by allowing BOP policies to limit time credit availability for prisoners beyond what is allowed by statute.

18 U.S.C. §3632(d)(4)(A)(i) and (ii) states:

"(i) A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities."

It is clear from the plain statutory language that eligible prisoners "shall" earn time credits for "every" 30 days of participation in qualifying activities. This requirement for time credits to be awarded to prisoners is subject to a limitation on availability described in 18 U.S.C. § 3632(d)(4)(B), which states:

"(B) **Availability.** A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that a prisoner completed-

(i) prior to the date of enactment of this subchapter [enacted Dec. 21, 2018]; or

(ii) during official detention prior to the date that the prisoner's sentence commences under section 3585(a)."

Further, the BOP is required to provide access to qualifying programming and activities throughout their entire term of imprisonment under

18 U.S.C. 3621(h)(6), which states:

"(6) Requirement to provide programs to all prisoners; priority. The Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according to their specific criminogenic needs, throughout their entire term of incarceration. Priority for participation in recidivism-reduction programs shall be given to medium-risk and high-risk prisoners, with access to productive activities given to minimum-risk and low-risk prisoners."

When these three statutory provisions of the First Step Act are read in concert, the only conclusion to be drawn is that Congress clearly

intended for prisoners to earn time credits during their entire custodial sentence, from commencement until the full satisfaction of their sentence.

BOP policies, however, limit the availability of time credits in a manner that is not in line with the language of the statute. The practice of the Bureau is to not award time credits for prisoner participation that occurs between the commencement of a prisoner's sentence and their arrival at the facility that is "designated" to be where the prisoner will serve their sentence. The BOP also limits time credit availability by projecting a prisoner's ability to earn time credits to cease upon that prisoner's placement in prerelease custody. Neither position has any basis in the language of the First Step Act.

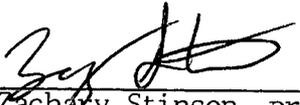
The district court in this case plainly erred in upholding the Bureau policies that are intended to limit the availability of Congressionally mandated time credits for prisoners who have worked hard to maintain low and minimum risk scores.

The proper remedy in this case is to grant the writ of certiorari before judgement and to set aside the unlawful policies and practices of the Bureau of Prisons related to the time credit provisions of the First Step Act.

CONCLUSION

The petition for a writ of certiorari before judgement should be granted.

Respectfully submitted,



Zachary Stinson, pro-se

Date: January 10, 2025