

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted October 2, 2024*

Decided October 3, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-2112

MATTHEW P. BOROWSKI,
Petitioner-Appellant,

v.

DAN SPROUL, Warden,
Respondent-Appellee.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 24-cv-00163-DWD

David W. Dugan,
Judge.

ORDER

Matthew Borowski filed a petition for a writ of habeas corpus, arguing that the Bureau of Prisons miscalculated his federal prison sentence by failing to credit him for time he spent in state custody. The district judge denied the petition, reasoning that the Bureau committed no such error and that, even if it had, Borowski had received a

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

below-guidelines sentence to account for that time. Because the Bureau's failure to credit Borowski is inconsistent with the plain language in 18 U.S.C. § 3585(b), we reverse and remand.

From March to June 2008, Borowski received multiple files of child pornography, in violation of 18 U.S.C. § 2252. But before any federal prosecution commenced, Borowski was arrested by Alabama state officials on July 3, 2008, and charged with second-degree rape and second-degree sodomy. Borowski was held in pre-trial detention until June 21, 2011—1,084 days or approximately 36 months—before ultimately pleading guilty to two counts of sexual misconduct, an Alabama misdemeanor for which the statutory maximum penalty is 12 months' imprisonment. *See* ALA. CODE §§ 13A-6-65, 13A-5-7. The state judge imposed two consecutive 12-month terms of imprisonment, an aggregate of 24 months. The court entered a separate judgment for each conviction, and on both judgments imposing 12 months' imprisonment, it ordered that "[a]ll entitled jail credit of 1,084 days ... shall be deducted from this Sentence." Because he had spent 354 more days in pre-trial detention than his sentence called for, Borowski was released.

More than a year later, on December 17, 2012, Borowski was arrested by federal officials for his receipt of child pornography in 2008. He pleaded guilty to one count of receiving child pornography, and based on an offense level of 37 and a criminal-history category of I, his advisory range under the Sentencing Guidelines was 210 to 262 months, capped by the statutory maximum of 240 months. *See* 18 U.S.C. § 2252(b)(1). At the sentencing hearing, the parties jointly moved for a 36-month "downward departure" to account for the time Borowski spent in detention in Alabama because the state offenses counted as relevant conduct that enhanced his guidelines range. *See* U.S.S.G. §§ 5K2.23, 5G1.3(b). The sentencing judge agreed and sentenced Borowski to 174 months' imprisonment, the bottom of the guidelines range less the 36-month downward departure.

Over a decade later, Borowski pursued an administrative remedy with the Bureau, seeking prior-custody credit for the 354 days he spent in Alabama pre-trial detention in excess of his state sentence. If his request had been granted, he would have been released in May 2024. But the Bureau rejected it.

Borowski then filed a petition for a writ of habeas corpus, *see* 28 U.S.C. § 2241, contending that the Bureau erred in applying 18 U.S.C. § 3585(b), a provision of the Sentencing Reform Act of 1984 that requires the Bureau to award prior-custody credit in certain circumstances where the prior time spent in official detention was not "credited

against another sentence.” The government opposed the petition, arguing that the Alabama state judge had applied “[a]ll” 1,084 days against the state sentence, and in any event, the federal sentencing judge had accounted for the time Borowski spent in state pre-trial detention when fashioning the sentence. The district judge agreed with the government and denied Borowski’s petition. Borowski appeals.

The parties present competing interpretations of § 3585(b)’s text. As the government sees it, time is “credited against another sentence” so long as it is nominally designated as such. On the other hand, Borowski contends that credit can only count against another sentence where it has actually reduced it. Interpreting this phrase for the first time, we agree with Borowski and conclude that for time in official detention to be “credited against another sentence,” the credit must have had the effect of reducing the sentence.

We begin with the ordinary meaning of the statutory text. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022). Section 3585(b) states:

A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences ... as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence.

In 1984, when Congress enacted the statute, “credit” as a verb meant “[t]o enter as a credit,” and the noun form was defined as a “[d]eduction of a payment made by a debtor from an amount due.” *Credit*, WEBSTER’S NEW RIVERSIDE UNIVERSITY DICTIONARY (2d ed. 1984). Borowski’s state prison sentence totaled 24 months. Once he spent 24 months in Alabama pre-trial detention, every additional day did not “offset” or act as a deduction toward any time he did or would eventually owe. In other words, the 354 days Borowski spent in state pre-trial custody beyond his 24-month sentence could not have been “credited against” any sentence.

Moreover, in the substantive context of sentencing, courts have routinely viewed “credit” as having a fundamental offsetting function. For example, the Supreme Court has in other contexts—good-time credits and overcrowding credits—understood credits to reduce the length of imprisonment. *See generally Barber v. Thomas*, 560 U.S. 474 (2010) (good-time credits); *Lynce v. Mathis*, 519 U.S. 433 (1997) (overcrowding credits). And we have expressly noted that it is “impossible to have an effective credit” where the time

spent in detention is longer than the sentence itself. *Kayfez v. Gasele*, 993 F.2d 1288, 1290 (7th Cir. 1993) (noting impossibility of receiving 416 days' credit on remaining sentence of 358 days); *see also Rios v. Wiley*, 201 F.3d 257, 272 (3d Cir. 2000) (limiting credit "to instances where the time period was not spent in service" of another sentence). Further, we have treated the length of state custody as reflective of how much time was "credited against" a state sentence. *Cf., e.g., Pope v. Perdue*, 889 F.3d 410, 418 (7th Cir. 2018) (holding that Bureau decision not to credit was lawful in part because state prisoner was expected to serve two years and six months and was released after same amount of time).

The purpose of § 3585(b) confirms our interpretation of the text. *Cf. Wooden v. United States*, 595 U.S. 360, 371 (2022). The goal of the statute is to avoid giving prisoners double credit so that they do not benefit twice for the same period of confinement. *See United States v. Wilson*, 503 U.S. 329, 337 (1992). Here, the double-credit problem envisioned by § 3585(b) does not exist. Almost a year of Borowski's time in Alabama pre-trial detention could not have been credited against his 24-month state sentence.

The government contends in the alternative that Borowski would receive double credit in a different way: by receiving it from the Bureau after the sentencing judge already reduced his sentence to account for the entire time spent in pre-trial detention in Alabama. We disagree, for two reasons. First, a downward departure under the Guidelines is distinct from a prior-custody credit determination under § 3585(b). *See United States v. Carr*, 107 F.4th 636, 672 n.16 (7th Cir. 2024). A sentencing judge's decision to grant a downward departure does not change the mandatory language of § 3585(b), which requires the Bureau, not the sentencing judge, to credit time spent in official detention. *Wilson*, 503 U.S. at 333. Although a sentencing judge may find a downward departure appropriate, only the Bureau may (and must) award credit toward a sentence under § 3585(b). *See* U.S.S.G. §§ 5K2.23, 5G1.3(b); *Wilson*, 503 U.S. at 333. The time for the government to object was in Borowski's federal criminal case, where it could have argued that, by awarding a 36- rather than 24-month downward departure, the sentencing judge mistakenly concluded that the 354 days "will not be credited to the federal sentence by the Bureau." U.S.S.G. §§ 5K2.23, 5G1.3(b). But the sentencing court's decision does not affect credit computation because, as the Supreme Court explained in *Wilson*, "the district court cannot determine the amount of the credit at sentencing." 503 U.S. at 335. Second, as Borowski notes, § 3585(b) requires the Bureau to credit time in custody not previously "credited against another sentence." Even if the downward departure here constituted a credit, it was against Borowski's current federal sentence, not *another* sentence. Regardless of the sentencing judge's actions, the

Bureau has not credited Borowski, as it must, for the 354 days he spent in state detention that has never been credited against another sentence.

The judgment of the district court is REVERSED. The case is REMANDED with the instruction to issue the writ consistent with this order.

We exercise our discretion to expedite the issuance of the mandate and adjust the hearing deadlines. FED. R. APP. P. 35(c), 40(a), 41(b); *see, e.g., United States v. Fieste*, 84 F.4th 713, 730 (7th Cir. 2023). The mandate shall issue seven days after the date this order is issued. A petition for panel or en banc rehearing must be filed within seven days after the issuance of this order. If one is filed, a petition for rehearing shall stay the issuance of the mandate until disposition of the petition. If the petition is denied, the mandate shall issue immediately upon denial.