

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

John David Thorpe v. U.S. Parole Commission

John David Thorpe v. U.S. Parole Commission, 902 F.2d 291 (5th Cir. 1990) · No. 89-4717 · Decided April 23, 1990

SUMMARY

The Fifth Circuit held that under 18 U.S.C. § 4106A, the U.S. Parole Commission properly set a release date and supervised release term for a prisoner transferred from Mexico, treating the foreign sentence as the statutory maximum. The Commission did not err by calculating good time credits to set a release date of 71 months (less than the 84-month Mexican sentence) and adding a 12-month supervised release term, because the combined total (83 months) did not exceed the foreign sentence. The court also rejected challenges that the Commission failed to consider the prisoner's medical condition or abuse by Mexican officials, finding no legal violation.

CASE DETAILS

COURT	United States Court of Appeals, Fifth Circuit
WRITING FOR THE COURT	Per Curiam; Reavley; King; Johnson
JURISDICTION	Federal
DECIDED	April 23, 1990
DOCKET	89-4717
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for Review of an Order of the U.S. Parole Commission
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	John David Thorpe v. U.S. Parole Commission

TOPICS

criminal procedure

appellate procedure

PRACTICE AREAS

Administrative Law

Criminal Procedure

Sentencing

QUESTIONS PRESENTED

1. Whether the Commission erred in imposing a release date and supervised release such that the total time exceeded the foreign sentence.
2. Whether the Commission erred in considering anticipated good time credits in setting the release date.
3. Whether the Commission erred in failing to consider Thorpe's health and abuse suffered.

HOLDINGS

1. The Commission did not err because the total time (71 months imprisonment plus 12 months supervised release = 83 months) was less than the 84-month foreign sentence, and the Commission correctly applied the Guidelines by treating the statutory maximum as the expiration of the sentence less good time credits.
2. The Commission did not err in considering good time credits; the calculation of the release date based on good time credits was proper.
3. The Commission did not err because the record shows these factors were considered, and Thorpe pointed to no law violated by the Commission's decision.

KEY QUOTATIONS

“Under 18 U.S.C. Sec. 4106A, the Commission is obligated to set a release date and period of supervised release, not to impose a sentence.” (¶5)

“The Commission correctly applied this section under the analogous circumstances of the instant case by interpreting the 'statutory maximum' as the expiration of the sentence less good time credits.” (¶7)

“Thorpe's argument that the Commission has ordered a release date in excess of the sentence imposed is therefore without merit.” (¶8)

FACTUAL BACKGROUND

Thorpe was arrested in Mexico on November 24, 1987, for drug offenses. He was convicted in Mexico of transportation and exportation of cocaine and received a seven-year sentence. He was transferred to the United States under a prisoner exchange treaty. The U.S. Parole Commission set a release date after approximately 71 months (accounting for good time) plus a 12-month supervised release term, based on the Mexican sentence and U.S. Sentencing Guidelines.

PROCEDURAL HISTORY

Thorpe appealed the Commission's determination of a release date from his Mexican sentence. The Commission had adopted the hearing examiners' recommendation that Thorpe be released after service of the full seven-year sentence less good time (approximately 71 months) plus a 12-month supervised release term.

DISPOSITION

affirmed

CASES CITED

- United States v. Buenrostro, 868 F.2d 135 (5th Cir. 1989)

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