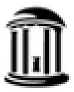

UNC SCHOOL OF GOVERNMENT

Sentence Credits Applied to Post-Release Supervision

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Sentence credits are the days of credit the prison system can award to inmates as an incentive for good behavior, work, or participation in programs in prison. The main sentence reduction credit for sentences imposed under Structured Sentencing is earned time. Earned time reduces an inmate's maximum sentence, hastening his or her release from prison to post-release supervision. Can it also reduce the person's term of post-release supervision?

I have been asked that a lot lately, probably due to a boilerplate motion circulating through the prisons. Some of you have probably seen it. The motion asks a judge to apply the defendant's "extra" earned time toward his or her post-release supervision period, reducing it from 9, 12, or 60 months, as the case may be, to some shorter length.

What is "extra" earned time? I think the motion is referring to any earned time the inmate might have accrued after his or her release date had already been reduced to the minimum sentence. Once the inmate reaches the minimum, no further reductions are possible, because—aside from a very few exceptions, like Advanced Supervised Release—no Structured Sentencing inmate can be released before the minimum. With that in mind, I think the inmate is asking the court to cash out whatever surplus earned time might have accrued and use it to reduce not the remaining term of imprisonment, but rather the PRS supervision period itself.

It's not a crazy argument. In fact, there are statutes that theoretically allow for something like this to happen. Though we typically think of earned time as applying to imprisonment, G.S. 15A-1368.4 says a person "may receive earned time credits against the length of the *supervision period*" (emphasis added) for compliance with the reintegrative conditions listed in G.S. 15A-1368.4, as described in G.S. 15A-1368.2(d). G.S. 15A-1368.2(d) indeed says a person's period of PRS may be reduced by earned time credit for compliance with the reintegrative conditions in G.S. 15A-1368.4 (actually it says -1368.5, but I think that's probably a typo in the statute).

But—and this is an important but—the law goes on to say that the award of credit would come from the Division of Adult Correction, "pursuant to rules adopted in accordance with law." And that turns out to be the whole issue, I think. The authority to adopt sentence credit rules (available here) rests exclusively with the Secretary of Public Safety, G.S. 148-13(a1), and the Secretary has never taken up the General Assembly's invitation to adopt a rule applying earned time to a PRS supervision period.

Before 2010, the notion of "extra" earned time didn't come up very often. Back then, the maximum earned time rate was six days per month. Six days out of every 30 is 20 percent, which was roughly the mirror image of the formulaic difference between minimum and maximum sentences (the maximum is always 120 percent of the minimum, plus additional time to cover the possibility of a post-release supervision revocation). That meant that the most successful inmates would accrue just enough earned time to reduce their maximum to the minimum, but rarely any more than that. In 2010, to reduce the prison population, the Secretary of Public Safety began awarding earned time more generously, with the maximum rate climbing to 9 days per month. At that rate, many more inmates reached their minimum—some with credit to spare.

The proliferation of that extra credit has prompted some inmates to file motions like the one described above. I'm not aware of an appellate case on point, but in the absence of an enabling rule adopted in accordance with law, there's no

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clear basis for an inmate to have earned time credit applied to a PRS supervision period.

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