

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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JOHNSON v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 99–5153. Argued February 22, 2000— Decided May 15, 2000

The Sentencing Reform Act of 1984 replaced most forms of parole with supervised release overseen by the sentencing court. If release conditions are violated, that court may “revoke [the] release, and require the person to serve in prison all or part of the [supervised release] term . . . without credit for time previously served on postrelease supervision” 18 U. S. C. §3583(e)(3). In March 1994, the District Court sentenced petitioner Johnson to imprisonment followed by a term of supervised release. After beginning supervised release in 1995, Johnson violated two conditions of his release. The District Court revoked his release and ordered him to serve an 18-month prison term to be followed by an additional 12 months of supervised release. The court cited no authority for ordering additional supervised release, but, under Circuit law, it might have relied on 18 U. S. C. §3583(h), a subsection added to the statute in 1994, which explicitly gave district courts that power. Johnson appealed, arguing that §3583(e)(3) did not give the district courts power to order a new supervised release term following reimprisonment, and that applying §3583(h) to him violated the *Ex Post Facto* Clause. Although the Sixth Circuit had previously taken the same position as Johnson with regard to §3583(e)(3), it affirmed his sentence, reasoning that §3583(h)’s application was not retroactive because revocation of supervised release was punishment for Johnson’s violation of his release conditions, which occurred after the 1994 amendments.

Held:

1. Section 3583(h) does not apply retroactively, so no *ex post facto* issue arises in this case. To prevail on his *ex post facto* claim, Johnson must show, *inter alia*, that the law operates retroactively. Contrary to the Sixth Circuit’s reasoning, postrevocation penalties are at-

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tributable to the original conviction, not to defendants' new offenses for violating their supervised release conditions. Thus, to sentence Johnson under §3583(h) would be to apply that section retroactively. However, absent a clear statement of congressional intent, §3583(h) applies only to cases in which the initial offense occurred after the amendment's effective date, September 13, 1994. The Government offers nothing indicating a contrary intent. The decision to alter §3583(e)(3)'s supervised release rule does not reveal when or how that legislative decision was intended to take effect; and the omission of an express effective date simply indicates that, absent clear congressional direction, it takes effect on its enactment date, *Gonzlon-Peretz v. United States*, 498 U. S. 395, 404. Nor did Congress expressly identify the relevant conduct in a way that would point to retroactive intent. Thus, this case turns not on an *ex post facto* question, but on whether §3583(e)(3) permitted imposition of supervised release following a recommitment. Pp. 4–8.

2. Section 3583(e)(3), at the time of Johnson's conviction, gave the District Court the authority to reimpose supervised release. Subsection (e)(3) does not speak directly to this question. And if the Court were to concentrate exclusively on the verb "revoke," it would not detect any suggestion that reincarceration might be followed by another supervised release term, for the conventional understanding of "revoke" is to annul by recalling or taking back. However, there are textual reasons to think that the option of further supervised release was intended. Subsection (e)(1) unequivocally "terminate[s]" a supervised release term without the possibility of its reimposition or continuation at a later time. Had Congress likewise meant subsection (3) to conclude any possibility of supervised release later, it would have been natural for Congress to write in like terms. That it chose "revoke" rather than "terminate" left the door open to a reading of subsection (3) that would not preclude further supervised release. The pre-1994 version of subsection (3) provided that a court could revoke a term of supervised release and require the person to serve in prison all or part of the "term of supervised release." This indicates that a revoked supervised release term continues to have some effect. If it could be served in prison, then the balance of it should remain effective when the reincarceration is over. This interpretation means that Congress used "revoke" in an unconventional way. However, the unconventional sense is not unheard of, for "revoke" can also mean to call or summon back without the implication of annulment. There is nothing surprising about the consequences of this reading. It also serves the congressional policy of providing for supervised release after incarceration in order to improve the odds of a successful transition from prison to liberty, and no prisoner would seem to need it

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more than one who has tried liberty and failed. This reading is also supported by pre-Sentencing-Guidelines parole practice. Congress repeatedly used “revoke” in providing for the consequences of parole violations, and there seems never to have been a question that a new parole term could follow a prison sentence imposed after revocation of an initial parole term. Since parole revocation followed by reincarceration was not a mere termination of a limited liberty that a defendant could experience only once per conviction, it is fair to suppose that, absent some textual bar, revocation of parole’s replacement, supervised release, was meant to leave open the possibility of further supervised release, as well. “Revoke” is no such bar, and the Court finds no other. Pp. 8–19.

181 F. 3d 105, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O’CONNOR, GINSBURG, and BREYER, JJ., joined, and in which KENNEDY, J., joined in part. KENNEDY, J., filed an opinion concurring in part. THOMAS, J., filed an opinion concurring in the judgment. SCALIA, J., filed a dissenting opinion.