

Justices' Ruling Stresses Quick Action Against Absconders

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On March 25, the U.S. Supreme Court held in *Rico v. U.S.* that a federal sentence of supervised release is not automatically extended when the defendant absconds from supervision.

The 8-1 decision reversed the ruling from the U.S. Court of Appeals for the Ninth Circuit and resolved a long-standing circuit split on whether a defendant's failure to report to a probation officer tolls the supervised release clock, effectively extending the supervised release term beyond what the sentencing judge originally ordered, and in some cases, beyond the authorized statutory maximum.

FACTS OF THE CASE

This case arose from petitioner Isabel Rico's long and complicated criminal history. In 2010, Rico pled guilty to federal drug trafficking charges and was sentenced to seven years in prison, followed by four years of supervised release.

A few months after leaving prison in January 2017, she violated her supervised release conditions. The sentencing judge revoked her release, imposed two months of additional imprisonment, and ordered a new 42-month term of supervised release that was slated to expire in June 2021.

Rico's second term of supervised release fared no better than her first. Shortly after her release in December 2017, she again violated a condition of her release. A warrant for her arrest was issued in May 2018, but federal authorities were unable to track her down until January 2023.

During the period of Rico's abscondment from supervision, Rico committed additional state law offenses, including a January 2021 arrest for evading police and driving without a license, and a January 2022 charge for possessing illicit drugs for sale, both of which resulted in convictions.

Back in the U.S. District Court for the Central District of California, the judge treated Rico's failure to report to her probation officer and her January 2021 offenses as two independent Grade C violations of her supervised release conditions, and her January 2022 drug offense as a separate Grade A violation.

Upon a finding of any violation, the court is required to conduct an individualized assessment, taking into consideration the grade of the violation, to determine whether to revoke supervised release. According to the sentencing guidelines, revocation is generally appropriate for a Grade A violation and may be appropriate for a Grade C violation.

In April 2024, after considering the sentencing guidelines and varying downward from them, the court sentenced her to 16 months of incarceration, followed by two more years of supervised release.

Rico appealed her sentence, arguing that the district court lacked authority to consider her January 2022 drug offense as a supervised release violation because that offense occurred after her supervised release term expired in June 2021.

In March 2025, the Ninth Circuit disagreed, reasoning that Rico's abscondment tolled the clock so that her supervised release term continued to run until federal authorities caught up with her in 2023, making her January 2022 drug offense a valid basis for revocation.

The Supreme Court granted certiorari and reversed.

THE COURT'S ANALYSIS

Justice Neil Gorsuch began his majority opinion by correcting what he called a misnomer in the Ninth Circuit's framing.[1] In legal settings, the word "toll" often denotes a stop or pause, but under the Ninth Circuit's approach, a defendant who absconds stops or pauses nothing. Instead, the absconding defendant remains subject to the conditions of supervised release and can be held accountable for violations they committed during abscondment.[2]

The court explained that "[w]hat the Ninth Circuit's rule really does is extend the period of supervised release beyond what a judge has ordered." [3]

THE SENTENCING REFORM ACT AND THE NINTH CIRCUIT'S RULE

The Sentencing Reform Act of 1984 established the U.S. Sentencing Commission and charged it with establishing guidelines to create more consistency in federal sentencing.

The court found that the Sentencing Reform Act arms courts with many tools to address defendants who fail to report or otherwise violate their supervised release terms, but it does not automatically extend a term of supervised release during abscondment.

The act states that a term of supervised release starts "the day the person is released from imprisonment" under Title 18 of the U.S. Code, Section 3624(e), and the district court generally sets maximum term lengths at one, three or five years, depending on the severity of the underlying offense under Title 18 of the U.S. Code, Section 3583(b).[4]

"Neither provision hints at anything like the Ninth Circuit's automatic extension rule," the court observed, noting that such a rule risks permitting courts to extend supervised release beyond the statutory maximum terms enacted by Congress.[5]

The court then turned to the act's specific extension and tolling provisions to highlight the absence of statutory support for the Ninth Circuit's rule. Title 18 of the U.S. Code, Section 3583(e)(2), permits a court to "extend a term of supervised release," but only after holding a hearing, considering various sentencing factors, and without exceeding statutory maximums or extending a term that has already expired.[6]

By requiring no hearing, permitting terms to extend beyond the statutory maximum and rendering court-ordered expiration dates meaningless, the court found that the Ninth Circuit's automatic extension rule "disregards not just one but each of these limits." [7]

Title 18 of the U.S. Code, Section 3583(i), provides that a court's revocation power can extend beyond the expiration of supervised release terms, but only for matters arising before their expiration, and only if a warrant or summons is issued during the term and the extension to the term does not exceed statutory maximums.

Further, Section 3624(e) provides a “true tolling rule” that suspends supervised release during imprisonment of 30 consecutive days or more.

Taken together, the court concluded that “the absence of anything like the Ninth Circuit’s rule in all these exacting instructions is striking and strongly suggestive that the Ninth Circuit’s rule more nearly represents an adornment to Congress’s work than a permissible interpretation of it.”[8]

THE COURT’S RESPONSE TO THE GOVERNMENT’S ARGUMENTS

The court found the government’s arguments in support of the Ninth Circuit’s decision unpersuasive.

First, the government argued that supervision “requires both observation and direction,” and because Rico received neither while absconding, she should receive no credit for serving on supervised release during that period.

In other words, the government argued that her term of supervised release had not expired when she was ultimately arrested, and the district court was allowed to consider her January 2022 conviction a violation of her supervised release.[9]

The justices identified fundamental flaws to this theory, including by saying that the government was anomalously asking the court to treat Rico as “both off and on supervised release at the same time” by contending that she was not supervised during her abscondment, yet simultaneously arguing that her term continued to run so that her state offenses could count as federal violations of her supervised release.[10]

Second, the government invoked the Supreme Court’s prior decisions in *Mont v. U.S.* in 2019, and *U.S. v. Johnson* in 2000, which the court found did not support the Ninth Circuit’s rule.

Mont simply recognized that Section 3624(e) expressly suspends a defendant’s term during imprisonment for a separate state offense, which, if anything, highlighted the absence of a comparable rule for abscondment.

Meanwhile, the court said that its decision in *Johnson* rejected an effort to “adorn the Act with a rule Congress could have adopted but did not enact,” much as the court was doing in the present case.[11]

Third, the government appealed to common law principles under which time spent escaped from prison does not count toward the discharge of a sentence, and argued that Congress intended to include this principle in enacting the Sentencing Reform Act.

While the court accepted the premise of this argument, it rejected the conclusion. The common law escape rule stops the clock and ensures that a defendant receives no advantage from escaping. By contrast, the court said that the government’s proposed rule “imposes a new punishment on him by automatically extending his term of supervised release.”[12]

Unlike an escaped prisoner, who is not serving their sentence of imprisonment when they are no longer in prison, a defendant who fails to report to their probation officer remains bound by the terms of their release and may be punished for violations that occur during this period of abscondment. The act also already provides many tools to ensure that defendants do not profit from violations without automatically extending the supervised release period beyond what a court orders.[13]

Finally, the government raised a policy concern that Section 3583(i)’s warrant-or-summons requirement to revoke a defendant’s supervised release after the term expires may leave courts powerless when probation officers do not timely realize a defendant’s absence late in the supervisory period.

But the high court was unmoved, declaring that “the proper place to register that complaint is with those who drafted it,” and added that “this Court is not free to rewrite the directions Congress has provided.”[14]

Justice Gorsuch also observed that a defendant’s failure to report to their probation officer is “presumably among the easiest violations for federal authorities to notice,” making it an improper candidate for the kind of remedial judicial rulemaking that the government sought.[15]

The Dissent

Justice Samuel Alito, writing alone in dissent, argued that the case was “much simpler than the court’s opinion suggests,” and that the court need not have reached the tolling question at all.

In Justice Alito’s view, the sentencing judge’s consideration of Rico’s January 2022 drug offense was independently authorized by the Sentencing Reform Act’s requirement that courts consider the factors set out in Title 18 of the U.S. Code, Section 3553(a), including considerations such as deterrence and the safety of the community.

Justice Alito noted that the sentencing judge varied downward from the 33-to-36-month advisory range to 16 months, only two months longer than the top of the range that would have applied based on her other violations without the drug offense.

Further, he stated that the sentencing guidelines are not binding, so the fact that the judge “started with the 33-to-36-month range and then varied downward to 16 months instead of starting with the lower range of 8 to 14 months and varying upward by 2 months based on the drug crime” was permissible.[16]

In conclusion, Justice Alito maintained that the district court “made no error at all,” and said that he would have affirmed its holding.[17]

Practical Implications

Going forward from Rico, federal courts will be unable to treat offenses committed after the expiration of a judicially ordered term of supervised release as independent supervised release violations merely because a defendant was absconding during the unexpired portion of the term.

The decision also places renewed emphasis on the importance of Section 3583(i)’s warrant-or-summons requirement, which permits courts to adjudicate supervised release violations after the term has expired, but only for matters arising before expiration, and only if a warrant or summons was issued during the term. As a result, probation officers and prosecutors will need to act promptly to secure warrants when defendants abscond or risk being unable to address later violations.

At the same time, the Supreme Court was careful to emphasize that it was not leaving courts without recourse. The Sentencing Reform Act still authorizes courts to revoke supervised release, impose additional imprisonment and order new terms of supervised release for violations committed during the judicially ordered term.

Moreover, as Justice Alito noted in his dissent, sentencing courts retain broad discretion under Title 18 of the U.S. Code, Section 3553(a), to consider a defendant’s post-supervision conduct when fashioning an appropriate revocation sentence.

Whether this ruling will drastically alter the ability of courts to impose sufficient punishment for violations of supervised release when a defendant absconds remains to be seen. In situations like Rico, where there are violations of supervised release, federal courts may consider post-supervised release conduct in punishing those offenses. Where there are no federal violations of supervised release to be punished, state courts may punish post-supervised release offenses more harshly because the state courts alone will be punishing the defendants.

[1] Slip Op. at 4.

[2] Id.

[3] Id.

[4] Slip Op. at 4-5.

[5] Id. at 5.

[6] Slip Op. at 5.

[7] Id.

[8] Slip Op. at 6-7.

[9] Slip Op. at 7.

[10] Id. at 8.

[11] Slip Op. at 8.

[12] Slip Op. at 9.

[13] Id. at 9-10.

[14] Slip Op. at 11.

[15] Id.

[16] Dissent Op. at 4.

[17] Id. at n.2.

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