

March 29, 2004: Authority of Judges on Good Time Credits.

Ronald W. Reeves

District Attorney

Tenth Judicial District

Post Office Box 1141

Tucumcari, New Mexico 88401

Re: Opinion Request – Authority of Judges to grant or deny good time credits.

Dear Mr. Reeves:

You requested our advice regarding the authority of district court or magistrate court judges to grant or deny good time credits to inmates in the penitentiary or county jails, and if such authority exists, whether judges can exercise that authority at the time of sentencing or early release.

After a review of the relevant statutes and case law, we conclude that district court and magistrate court judges do not have the authority to grant or deny good time credits. This conclusion, therefore, makes it unnecessary to address the second part of your inquiry.

A trial court's power to sentence is derived exclusively from statute. See *State v. Dominguez*, 115 N.M. 445, 456, 853 P.2d 147, 158 (Ct. App. 1993). First, there is no provision in the Criminal Sentencing Act, NMSA 1978, § 31-18-12 et seq., or other sentencing statutes, that provide any authority for judges to grant or deny meritorious deductions, commonly referred to as "good time." Second, the meritorious deduction statutes clearly indicate that statutory good time credits are a discretionary, administrative matter entrusted to corrections and jail administrators, not the courts. *State v. Aqui*, 104 N.M. 345, 721 P.2d 771 (1996). With regard to inmates confined in a state correctional facility, NMSA 1978, § 33-2-34(B) (1999) provides that

A prisoner may earn meritorious deductions upon recommendation by the classification committee, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs. A prisoner may not earn meritorious deductions unless the recommendation of the classification committee is approved by the warden.

With regard to inmates confined in county jails, NMSA 1978, § [33-3-9](#) (1995) provides, in relevant part:

A. The sheriff or jail administrator of any county, with the approval of the committing judge or presiding judge, may grant any person imprisoned in the county jail a deduction of time from the term of his sentence for good behavior and industry and shall establish rules for the accrual of “good time.”

...

D. No other time allowance or credits in addition to deductions of time permitted under this section may be granted to any prisoner.

Neither of these good time statutes gives authority to sentencing judges to award or deny good time. Both are clear that the granting of good time credits is an administrative matter for the Corrections Department or the county sheriff or jail administrator. Both statutes require the respective administrators to establish rules to implement the statutory provisions. The New Mexico Supreme Court has held that the computation and award of good time credits is exclusively an administrative responsibility. *Aqui*, 104 N.M. at 348, 721 P.2d at 774. The Court reaffirmed this holding in *State v. Martinez*, 126 N.M. 39, 42, 966 P.2d 747, 750 (1998).

Good time awards, however, are not completely unaffected by judicial decisions. NMSA 1978, § 31-18-15 (F) (2003) requires the sentencing judge, when imposing a sentence of imprisonment for a felony offense, to indicate whether the offense is a serious violent offense, as defined in § 33-2-34. This judicial determination is necessary for the Corrections Department to ascertain the maximum amount of good time credits that the offender may earn.

Also, § 33-3-9 requires that the sheriff or jail administrator obtain the approval of the sentencing judge or presiding judge prior to deducting good time from the sentence of a jail inmate. This statute limits the judge’s role to approving the sheriff’s or jail administrator’s discretionary decision to award good time. The statute does not require the sheriff or jail administrator to obtain the committing judge’s consent when there is a discretionary decision to deny or forfeit a jail inmate’s good time credits.

Additionally, *Brooks v. Shanks*, 118 N.M. 716, 885 P.2d 637 (1994), addressed the judiciary’s role as it relates to the administrative duty of awarding good time to inmates. The New Mexico Supreme Court did not deviate from the *Aqui* decision that the award of good time credits is exclusively an administrative responsibility. The Court, in *Brooks*, however, did recognize a due process right when a forfeiture or termination of good time has been imposed in a manner that departs from or circumvents the statutory and administrative procedures prescribing how such a forfeiture or termination should be applied. The *Brooks* decision dealt only with the express statutory limitations addressing termination and forfeiture issues, and held that the courts have a duty to analyze whether a forfeiture or termination of good time credits has been carried out so as not to violate the inmate’s right to due process.

Therefore, statutes and case law give district court and magistrate courts the authority to review and approve certain discretionary decisions made by administrators of the Corrections Department and county jails, but judges do not have the authority to grant or deny good time credits to inmates confined in such institutions.

We hope this response is helpful. If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

Ralph E. Trujillo

Assistant Attorney General

cc: Stuart Bluestone, Chief Deputy Attorney General