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Criminal Law - Use of Equitable Tolling to Enforce Violations of Supervised Release after Original Term Has Expired - United States v. Buchanan, 638 F.3D 448 (4th Cir. 2011)

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**CRIMINAL LAW—USE OF EQUITABLE TOLLING
TO ENFORCE VIOLATIONS OF SUPERVISED
RELEASE AFTER ORIGINAL TERM HAS
EXPIRED—*UNITED STATES V. BUCHANAN*, 638
F.3D 448 (4TH CIR. 2011)**

The equitable tolling principle allows a court to suspend the “clock” of a statutorily mandated time limitation in the interests of equity.¹ The doctrine is used by the court to ensure that an individual does not escape justice simply because of a lapse in time.² In *United States v. Buchanan*,³ the United States Court of Appeals for the Fourth Circuit examined whether the period of supervised release is tolled when an individual absconds from mandated federal supervision and becomes a fugitive.⁴ The Fourth Circuit held that the period of supervised release is tolled while the individual is a fugitive, and subsequently, the individual is held accountable beyond the original term for violations of the provisions of the supervised release.⁵

In 1991, William Buchanan pled guilty to conspiracy to distribute fifty grams or more of crack cocaine, and he received a sentence of 120 months in prison.⁶ Buchanan was then released in March 1993 and his term of supervised release began.⁷ However, in May 1994, police in Ohio arrested Buchanan following his indictment on state drug trafficking charges.⁸ When arrested in Ohio, he used the name William Buchanan and provided the same date of birth and social security number as “Kenneth

¹ See *Holmberg v. Armbrrecht*, 327 U.S. 392, 397 (1946) (describing equity principles). The Supreme Court further notes that “[t]his equitable doctrine is read into every federal statute of limitation.” *Id.*

² See *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990) (discussing equitable tolling and describing rationale for applicability). “It permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim.” *Id.*

³ 638 F.3d 448 (4th Cir. 2011).

⁴ *Id.* at 450-51 (noting issue before the court).

⁵ *Id.* at 458 (stating holding of the case).

⁶ *Id.* at 449. The sentence was subsequently reduced to thirty months imprisonment based on a substantial assistance motion. *Id.* At the time of the conviction, William Buchanan was known as Kenneth Parker. See *United States v. Buchanan*, 632 F. Supp. 2d 554, 555 n.1 (E.D. Va. 2009).

⁷ See *Buchanan*, 638 F.3d at 449. The five-year supervised release term was scheduled to last until March 1998. *Id.*

⁸ *Id.*

Parker.”⁹ In February 1995, Buchanan failed to appear in court to face the state drug trafficking charges, and the court issued a warrant for his arrest.¹⁰

In April 1995, Buchanan’s probation officer filed a “Petition on Probation and Supervised Release,” alleging multiple violations of the terms of his supervised release.¹¹ Buchanan remained a fugitive until December 2008, when police arrested him in Georgia.¹² Upon learning that Buchanan was being held in custody, based on his extensive history of alleged criminal activities while a fugitive, Buchanan’s probation officer in Virginia filed an addendum to the “Petition on Probation and Supervised Release” alleging the newly discovered violations of the terms of his supervised release.¹³ Buchanan conceded that the first petition filed in 1995 was properly before the court, but he challenged the addendum to the petition as beyond the term of supervised release originally set to expire in March 1998.¹⁴ The United States District Court for the Eastern District of Virginia held that the supervised release term was tolled while Buchanan was a fugitive, based on the lack of clear statutory guidance governing supervised release and the congressional intent in creating the supervised release program.¹⁵ The district court found Buchanan guilty of three of the

⁹ See *Buchanan*, 632 F. Supp. 2d at 555 (discussing Buchanan’s use of different names when arrested). The federal probation officer in charge of his supervision did not learn of the state drug charge until nearly a year after the initial indictment. *Id.*

¹⁰ See *Buchanan*, 638 F.3d at 449. The last contact Buchanan had with his federal probation officer was in January 1995. *Id.*

¹¹ *Id.* The violations included the state drug trafficking charge in Ohio, failure to report to his probation officer, and failure to notify his probation officer of a change in his residence or employment. *Id.*

¹² *Buchanan*, 638 F.3d at 449.

¹³ *Id.* These violations included:

- (1) in September 1996, Buchanan was arrested in Alabama for marijuana trafficking;
- (2) in March 2005, he was arrested in Missouri for (*inter alia*) possession of a controlled substance and unlawful use of a weapon; (3) in January 2008, he was arrested in Georgia for driving under the influence; and (4) in December 2008, he was arrested in Georgia for entering an auto or other motor vehicle with intent to commit a theft or felony, and financial transaction card fraud.

Id. at 449-50; see also *Buchanan*, 632 F. Supp. 2d at 556-57 (describing aliases and different identification used by Buchanan to avoid arrest). It was discovered upon his apprehension in Georgia that Buchanan, although arrested on a number of occasions while a fugitive, avoided identification as a fugitive by providing false names, birth dates, driver’s licenses, and social security numbers. *Buchanan*, 632 F. Supp. 2d at 556-57.

¹⁴ See *Buchanan*, 638 F.3d at 450.

¹⁵ See *Buchanan*, 632 F. Supp. 2d at 558-59 (analyzing statute and lack of clear guidance on issue). The district court reasoned that the intent of Congress in creating supervised release was for the rehabilitation and reintegration of convicted criminals into society. *Id.* at 559. The goals of the statute could only be achieved through the monitoring and supervision of the convicted

supervised release violations, two of which occurred after the original term of supervised release expired.¹⁶ The Fourth Circuit upheld this decision, deciding that a term of supervised release is tolled while an individual is beyond the supervision of government authorities, and that the individual should be held liable for all violations of the supervised release while a fugitive.¹⁷

18 U.S.C. § 3583 regulates the supervised release system imposed on certain individuals convicted of federal crimes.¹⁸ The statute provides specific statutory limits for the term of supervised release and provides for an express tolling provision in one specific instance: incarceration lasting more than thirty days.¹⁹ The courts, however, have utilized the long-established theory of equitable tolling in certain cases to enforce the congressional intent of a statute.²⁰ The federal courts look at the circumstances surrounding a case to decide whether to use equitable principles in the interest of justice.²¹ The Fourth Circuit, while addressing

criminals by government officials. *Id.*

¹⁶ *Id.* The court then imposed sentences of forty-eight months, thirty-six months, and twenty-seven months to run concurrently. *Buchanan*, 638 F.3d at 450.

¹⁷ See *Buchanan*, 638 F.3d at 458 (stating holding of case).

¹⁸ See 18 U.S.C. § 3583 (2006) (amended 2008) (describing terms of release and supervision for federal prisoners); see also S. REP. NO. 98-225, at 123-24 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3306-07 (describing congressional intent and design of supervised release program).

¹⁹ 18 U.S.C. §§ 3583(b), 3624(e) (2006) (amended 2008) (stating time limits and that supervised release does not run during incarceration over thirty days). The statute also allows the court to revoke supervised release beyond the original term to give courts the power to punish an offender for earlier violations. 18 U.S.C. § 3583(i). Congress amended the statute by adding this section after the courts had utilized equitable tolling in this situation to ensure that the intent of the statute was carried out even if there was a lapse in time. See *United States v. Janvier*, 599 F.3d 264, 265-66 (2d Cir. 2010) (discussing judicial history leading up to adoption of amendment). After a number of judicial decisions authorizing the courts to revoke supervised release after the term had concluded, Congress enacted an amendment to make that authorization explicit and establish the statutory standards. *Id.* at 266 (citing Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110505, 108 Stat. 1796, 2017 (1994)).

²⁰ See *Holmberg v. Armbricht*, 327 U.S. 392, 397 (1946) (noting breadth of potential application of equitable principles). *But see* *Wallace v. Kato*, 549 U.S. 384, 396 (2007) (noting equitable tolling should only be used in rare occasions). “Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.” *Id.*

²¹ See *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990) (describing need for court’s discretion in applying doctrine); see also *United States v. Delamora*, 451 F.3d 977, 980 (9th Cir. 2006) (holding when defendant absconded and used alias state did not have opportunity to enforce law). His actions did not give the state the opportunity to file for a violation of the term of his supervised release, so tolling was in the interest of justice. *Delamora*, 451 F.3d at 980; *Young v. United States*, 535 U.S. 43, 50 (2002) (“This Court has permitted equitable tolling in situations ‘where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period . . .’”). In *Young*, the Court reasoned that the claimants had taken the steps available to enforce the claim within the statutory period and

post-incarceration supervision, originally considered equitable tolling with regards to probation violations.²² The court has further utilized equitable tolling in the context of an escapee from prison who claims that his time as a fugitive should be credited to his sentence so as not to reward illegal conduct.²³ Two federal circuits had previously addressed the issue of equitable tolling in the supervised release context and have come to different conclusions.²⁴

The Court of Appeals for the Ninth Circuit was the first federal circuit to consider the issue of fugitive tolling in the supervised release context and has in subsequent cases reiterated its earlier findings.²⁵ The

should, therefore, be afforded an opportunity to amend the complaint when new claims come to light. *Young*, 535 U.S. at 50. The Court then looked at the statutory construction of the federal bankruptcy statute at issue. *Id.* at 52-53. The Court rejected the contention that an express tolling provision in one section of the statute gave the impression that Congress intentionally did not include tolling provisions in other sections of the statute. *Id.* The Court looked at the differences between the sections and found that this suggested that the express tolling provision was not a clear indicator that Congress had considered tolling for all sections. *Id.* at 53. See generally *Barreto-Barreto v. United States*, 551 F.3d 95, 101 (1st Cir. 2008) (“[T]he petitioners carry the burden of demonstrating that extraordinary circumstances beyond their control ‘prevented timely filing,’ or that they were ‘materially misled into missing the deadline.’” (quoting *Trenkler v. United States*, 268 F.3d 16, 25 (1st Cir. 2001))).

²² See *United States v. Workman*, 617 F.2d 48, 51 (4th Cir. 1980) (allowing tolling if individual commits voluntary act which results in lack of supervision). In *Workman*, the individual had his probation revoked for two alleged violations, which were then overturned on appeal. *Id.* at 49-50. The district court ruled that the probation period was tolled while the case was on appeal from the district court to the Fourth Circuit because the defendant was not under probation at that time, was not supervised by any court officer, and was not incarcerated. *Id.* at 50. The Fourth Circuit held that because this period of no supervision was caused through no fault of the individual’s, the court had no authority to toll the period of probation. *Id.* at 51; see also *Anderson v. Corall*, 263 U.S. 193, 196 (1923) (“Mere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of sentence.”).

²³ *United States v. Luck*, 664 F.2d 311, 312 (D.C. Cir. 1981) (citing *Anderson v. Corall*, 263 U.S. 193, 196 (1923)) (“It is well established that when the service of a sentence is interrupted by conduct of the defendant the time spent out of custody on his sentence is not counted as time served thereon.”).

²⁴ Compare *United States v. Murguia-Oliveros*, 421 F.3d 951, 953 (9th Cir. 2005) (stating term of supervised release can be tolled when individual absconds from justice), with *United States v. Hernández-Ferrer*, 599 F.3d 63, 68-69 (1st Cir. 2010) (holding statutory canon *expressio unius est exclusio alterius* does not permit court to toll term).

²⁵ See *Murguia-Oliveros*, 421 F.3d at 953 (tolling period of supervised release based on fugitive status). In *Murguia-Oliveros*, the United States government convicted Margarito Murguia-Oliveros of illegal immigration and sentenced him to a period of incarceration, deportation, and a three-year term of supervised release. *Id.* at 952. He subsequently violated a condition of his supervised release by reentering the United States and the police rearrested him on an unrelated charge. *Id.* The court revoked his term of supervised release when the arrest occurred, nearly three months after the original term was set to expire. *Id.* at 953. The Ninth Circuit held that his term of supervised release was tolled while he was a fugitive because the court should not reward an individual who flees from justice by continuing to run the “clock” without any federal supervision. *Id.* at 954. The court stated a long held principle that “we

court found that the term of supervised release should be tolled while an individual is a fugitive to ensure that the individual does not benefit from his flight and that the goals of Congress in enacting the legislation are accomplished.²⁶ The court found it compelling that the individual did not receive the rehabilitative supervision intended by Congress with the enactment of the Violent Crime Control and Law Enforcement Act of 1994.²⁷ The Ninth Circuit subsequently confirmed the holding of *United States v. Murguia-Oliveros*²⁸ in *United States v. Watson*,²⁹ reaffirming that an individual should serve the full term of his supervised release while being both monitored by government officials and being held accountable for violations of terms of release, to avoid rewarding wrongful acts.³⁰

The First Circuit, however, has held that the equitable tolling provision is not available to courts under the statutory construction canon of *expressio unius est exclusio alterius*.³¹ In *United States v. Hernández-*

should not reward those who violate the terms of their supervised release and avoid arrest until after the original term expires.” *Id.* (citing *United States v. Crane*, 979 F.2d 687, 691 (9th Cir. 1992)).

²⁶ See *Samson v. California*, 547 U.S. 843, 850 (2006) (explaining supervised release is its own form of restraint separate from imprisonment); *Murguia-Oliveros*, 421 F.3d at 954 (stating standard not to reward flight from justice). “[F]ederal supervised release . . . in contrast to probation, is meted out in addition to, not in lieu of, incarceration.” *Samson*, 547 U.S. at 850 (internal quotation marks omitted) (quoting *United States v. Reyes*, 283 F.3d 446, 461 (2d Cir. 2002)); see also *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232-33 (1959) (stating long-held principle that individual should not gain from unlawful conduct); *United States v. Kosko*, 870 F.2d 162, 163-64 (4th Cir. 1989) (citing long-standing federal doctrine that individuals should not benefit from their own wrongful conduct).

²⁷ See *Murguia-Oliveros*, 421 F.3d at 954; see also *United States v. Jackson*, 426 F.3d 301, 305 (5th Cir. 2005) (shortening period of supervised release interferes with congressional goal of rehabilitation). In *Jackson*, the court recognized that the goal of supervised release was rehabilitation and reentry into the community. *Id.* Congress, in replacing the probation system with supervised release, established specific rules and regulations to guide the supervised release system to achieve these goals. *Id.* The court recognized that supervision was an integral part of the process, and that without monitoring by a probation officer, “it was impossible for his probation officer to assist him in returning to the community.” *Id.* See generally S. REP. NO. 98-225, at 124 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3307 (1983) (describing intent of supervised release and goals of new program). Congress described some of the goals of the statute as “the need for the sentence to protect the public from further crimes of the defendant,” but also as “the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.” *Id.*

²⁸ 421 F.3d 951 (9th Cir. 2005).

²⁹ 633 F.3d 929 (9th Cir. 2011).

³⁰ See *id.* at 931-32 (describing development of fugitive tolling provision in Ninth Circuit). In *Watson*, the defendant violated the terms of his supervised release and became a fugitive. *Id.* at 932. The court held that the term of supervised release tolled until the government was able to resume supervision. *Id.* In this case, the period of supervised release was tolled until Watson was rearrested. *Id.* The court confirmed the holdings in *Crane* and *Murguia-Oliveros*, and restated that an individual should not benefit by absconding from supervised release. *Id.* at 931-32.

³¹ See *United States v. Hernández-Ferrer*, 599 F.3d 63, 67-68 (1st Cir. 2010) (stating

Ferrer,³² the court reasoned that because 18 U.S.C. §3624(e) provides an express statutory tolling provision for terms of incarceration lasting longer than thirty days, Congress did not intend to allow any other tolling of the term of supervised release.³³ The court further noted that a plain-language reading of the statute limited the sanctions to the “supervised release term,” taking that to mean the original time period imposed by the court.³⁴ The First Circuit also found it persuasive that the individual who absconds from justice can still be prosecuted for the initial violation of the terms of his supervised release in the very act of becoming a fugitive, and further, that the court at sentencing may take into account the subsequent violations committed after the term had expired.³⁵ The court reasoned that tolling should only be utilized in limited circumstances, and it did not believe that

statutory canon applies to supervised release statutes). In *Hernández-Ferrer*, the court sentenced the individual to supervised release as part of a conviction for conspiracy to distribute narcotics. *Id.* at 64. While on supervised release, the government charged the individual with a new narcotics offense, and he was later arrested on January 11, 2006 after nearly six months as a fugitive; one day after the term of supervised release expired. *Id.* at 65. Four months later, the government filed a supplemental motion alleging a violation of the terms of his supervised release based on the new arrest. *Id.* The court reasoned that the violation had occurred outside his term of supervised release based on a plain-language reading of the statute. *Id.* at 66. Further, the court found it compelling that the statute contained an express tolling provision with regards to terms of incarceration lasting longer than thirty days. *Id.* at 67. Citing a number of decisions surrounding *expressio unius est exclusio alterius*, the First Circuit held that the court could not read equitable tolling into the statute. *Id.* *Contra* *State ex rel. Curtis v. De Corps*, 16 N.E.2d 459, 462 (Ohio 1938), *quoted in* *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168-69 (2003) (“[*Expressio unius*] properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference . . .”). *Expressio unius est exclusio alterius* is “[a] canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative.” BLACK’S LAW DICTIONARY 661 (9th ed. 2009).

³² 599 F.3d 63 (1st Cir. 2010).

³³ *See id.* at 67-68 (citing statutory construction canon as not allowing equitable tolling provision). “The absence of an express tolling provision for fugitive status, coupled with the presence of an express tolling provision that encompasses other circumstances, is highly significant.” *Id.* at 67. *Contra* *Young v. United States*, 535 U.S. 43, 52 (2002) (holding tolling provision did not exclude possibility for other equitable tolling in bankruptcy context). “Congress is presumed to draft limitations periods in light of the principle that such periods are customarily subject to equitable tolling unless tolling would be inconsistent with statutory text.” *Id.* at 44.

³⁴ *See Hernández-Ferrer*, 599 F.3d at 66 (stating plain meaning of statute is clear); *see also* *United States v. Johnson*, 529 U.S. 53, 58 (2000) (holding that just because statute allows one exception, courts cannot read further exceptions into language). *Contra* *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001) (stating statutory construction canons are not mandatory for courts to follow); *United States v. Johnson*, 138 F.3d 115, 119 (4th Cir. 1998) (acknowledging sentencing should not be “hyper-technical exercise devoid of common sense”); 82 C.J.S. *Statutes* § 424 (2011) (stating construction maxim is not strict rule but in place to provide guidance).

³⁵ *See Hernández-Ferrer*, 599 F.3d at 69 (stating court’s belief that sufficient penalties existed to deter violations of supervised release).

a tolling provision was necessary to carry out the statute's goals, in light of the other deterrents in place.³⁶

In *United States v. Buchanan*, the Fourth Circuit embraced the reasoning of the Ninth Circuit and held that reading an equitable tolling provision into the statute satisfied congressional intent.³⁷ The Fourth Circuit analogized the standard created for parole cases to the supervised release standard and found that case law favored equitable tolling in post-incarceration cases where the government was intended to have a measure of supervision over the individual.³⁸ The Fourth Circuit did not agree with Buchanan's argument, which he based on the standard adopted by the First Circuit: that the statutory construction canon and a plain-language reading of the statute did not allow equitable tolling to be used.³⁹ The court was not convinced that Congress had considered the possibility of fugitive flight when drafting the statute, and that Congress, therefore, could not have intentionally prohibited the use of tolling by the courts in other scenarios to carry out the intent of the statute.⁴⁰ Based on the court's interpretation of the congressional intent in enacting the statute, the Fourth Circuit reasoned that the individual should not receive credit to his time of supervised release when he was not subject to the supervision of the government.⁴¹

The Fourth Circuit correctly concluded that equitable tolling should be utilized to ensure the accomplishment of Congress's intent in enacting the supervised release statute.⁴² By absconding from supervision, Buchanan frustrated the intent of Congress in creating supervised release—

³⁶ *Id.* (describing other means courts have to punish individuals for flight from supervised release).

³⁷ See *United States v. Buchanan*, 638 F.3d 448, 454-55 (4th Cir. 2011) (outlining Ninth and First Circuits arguments and embracing equitable tolling); see also *United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th Cir. 2005) (outlining holding in *Murguia-Oliveros*).

³⁸ See *Buchanan*, 638 F.3d at 452; see also *United States v. Workman*, 617 F.2d 48, 51 (4th Cir. 1980) (discussing holding in probation case where court utilized equitable tolling). Probation and supervised release were both forms of government supervision designed to reintegrate people convicted of criminal offenses back into society. *Buchanan*, 638 F.3d at 452. The similarities of the two systems allowed the court to utilize the case law relating to probation violations as guidance. *Id.*

³⁹ See *Buchanan*, 638 F.3d at 455; see also *Chickasaw*, 534 U.S. at 94 (explaining that statutory construction canons are not mandatory).

⁴⁰ See *Buchanan*, 638 F.3d at 456 (“[C]ourts should ‘not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.’” (citation omitted) (quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003))).

⁴¹ See *Buchanan*, 638 F.3d at 454 (“[A] person on supervised release ‘should not receive credit against his period of supervised release for time that, by virtue of his own wrongful act, he was not in fact observing the terms of his supervised release.’” (quoting *United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th Cir. 2005))).

⁴² See *Buchanan*, 638 F.3d at 458.

rehabilitation and reintegration.⁴³ Based on longstanding federal principals, he should not be credited for his illegal action.⁴⁴ The present case is analogous to a number of past cases, such as *United States v. Jackson*,⁴⁵ where the courts have found that the goals of supervised release are not being met if an individual is not being monitored.⁴⁶

Further, statutory construction canons are not absolute mandates, and the courts must look to the intent of Congress in enacting the statute.⁴⁷ Congress established supervised release to ensure that individuals who are released from federal prison can be monitored and properly reintegrated into society.⁴⁸ An individual should not avoid the restrictions, reintegration programs, and deterrent penalties of supervised release by committing an unlawful act that results in a sufficient lapse in time to end the term.⁴⁹ Congress amended the statute in 1994 to allow the United States Probation Office to file a petition within a reasonable amount of time after the expiration of the term of supervised release, where an individual committed a violation during that term of release.⁵⁰ Congress should similarly resolve the current issue concerning equitable tolling by passing an amendment to the statute that would provide for a fugitive tolling provision that would ensure that individuals are held accountable for the violations of the terms of the supervised release when they are recaptured.⁵¹ Already, both the Ninth and Fourth Circuits have properly addressed an issue that Congress did not anticipate by utilizing equitable tolling.⁵² Congress should once

⁴³ See *supra* note 15; *supra* notes 23, 27 and accompanying text (stating long held federal belief to not reward poor behavior).

⁴⁴ See *supra* note 26 and accompanying text; *supra* note 30 (explaining individuals should not benefit from their illegal conduct).

⁴⁵ 426 F.3d 301 (5th Cir. 2005).

⁴⁶ See *supra* note 27 and accompanying text (stating goals of supervised release are frustrated by lack of monitoring).

⁴⁷ See *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001) (discussing flexibility in application of statutory construction canons); see also *United States v. Johnson*, 138 F.3d 115, 119 (4th Cir. 1998) (stating sentencing should not be “devoid of common sense”).

⁴⁸ See S. REP. NO. 98-225, at 124 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3307 (describing congressional intent of supervised release and goals of program).

⁴⁹ See *United States v. Janvier*, 599 F.3d 264, 265-66 (2d Cir. 2010) (recognizing lapse of time alone should not allow individual to avoid justice). “The necessary proceedings take time; if courts lost the power to punish upon expiration of the release or probation term, proceedings on charges of violations filed late in the term would either be rushed, leading to unreliable outcomes, or delayed, leading to avoidance of just punishment.” *Id.* at 266.

⁵⁰ See *supra* note 19 and accompanying text (describing evolution of case law and subsequent amendment to statute).

⁵¹ See *supra* note 26 and accompanying text (outlining courts’ long-standing maxim that individuals should not gain from wrongful conduct); see also *supra* note 19 (describing Congress’s amending statute to reflect courts’ position on issue).

⁵² See *United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th Cir. 2005) (describing

again amend the statute to ensure that the goals of supervised release are not frustrated by the passage of time due to an individual's inappropriate actions.⁵³

Additionally, the Fourth Circuit should have further analogized the situation to the civil matters where equitable tolling is utilized.⁵⁴ In these instances, a party is allowed to amend their filing after the statutory period to correct a defective pleading if they attempted to file a proper motion, but the actions of the other party prevented them from doing so.⁵⁵ The government filed the initial motion within the statutorily-allowed period based on the information they had regarding Buchanan's supervised release violations.⁵⁶ Based on the standard set by the Supreme Court in *Young v. United States*,⁵⁷ equitable tolling can be used "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period."⁵⁸ The government further attempted to file a proper motion, but Buchanan's active concealment of his identity while a fugitive prevented this.⁵⁹ Therefore, once the government discovered Buchanan's violations, it should have been afforded a reasonable opportunity to correct the filing and charge Buchanan with his subsequent violations of the terms of his supervised release.⁶⁰ The use of equitable tolling and its rationale in the civil context provides further support to the Fourth Circuit's use in this

reasoning of Ninth Circuit in utilizing equitable tolling); see also *United States v. Buchanan*, 638 F.3d 448, 456 (4th Cir. 2011) (stating Fourth Circuit did not believe Congress anticipated fugitive status when drafting statute).

⁵³ See *supra* note 19 and accompanying text (describing amendment to statute and judicial history leading up to change).

⁵⁴ See *supra* note 21 and accompanying text (describing history of equitable tolling in civil lawsuits). The courts have applied the principle of equitable tolling in civil cases when the opposing party has actively hidden their identity or offenses to utilize the statute of limitations for improper purposes. See *supra* note 21 and accompanying text.

⁵⁵ See *United States v. Delamora*, 451 F.3d 977, 979 (9th Cir. 2006) (describing scenario where party used alias and false identity to avoid detection).

⁵⁶ See *United States v. Buchanan*, 638 F.3d 448, 449 (4th Cir. 2011) (describing initial petition filed by probation officer).

⁵⁷ 535 U.S. 43 (2002).

⁵⁸ *Id.* at 50 (quoting *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)); see also *Delamora*, 451 F.3d at 980 (stating claimant should be given opportunity to amend complaint once new causes come to light).

⁵⁹ See *United States v. Buchanan*, 632 F. Supp. 2d 554, 556-57 (E.D. Va. 2009) (describing aliases and false identities used by Buchanan when arrested). Buchanan avoided detection by federal authorities each time he was arrested by providing local arresting authorities with false personal information. See *id.*

⁶⁰ See *United States v. Buchanan*, 638 F.3d 448, 449 (4th Cir. 2011) (describing filing of addendum in 2009 once Buchanan was rearrested). See generally *supra* note 21 and accompanying text (describing ability to amend filings once information discovered in civil context).

criminal case.⁶¹

In *United States v. Buchanan*, the Fourth Circuit joined the Ninth Circuit court in holding that a term of supervised release may be tolled while an individual is a fugitive. This decision enforces the congressional intent in enacting the statute by ensuring that an individual on supervised release serves their full term while being monitored and rehabilitated by a probation officer. The First Circuit erred by applying the statutory construction canon without a clear indication that Congress had considered the possibility of an individual becoming a fugitive during the term of supervised release and committing subsequent crimes. The Fourth Circuit correctly applied equitable tolling in the fugitive status context, and Congress should once again amend the statute to fully carry out the statute's intended purpose.

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⁶¹ See generally *Buchanan*, 638 F.3d at 455 (describing holding of case).