MCDONALD, C. J., with whom VERTEFEUILLE, J., joins, dissenting. I disagree with the majority's holding that the petitioner is entitled to credit toward subsequently imposed sentences for the 109 days of good time he earned while serving his prior three year sentence.

In *McCarthy* v. *Commissioner of Correction*, 217 Conn. 568, 587 A.2d 116 (1991), we held that, for purposes of *estimating* enhanced good time credits under General Statutes § 18-7a (a),[1] consecutive sentences must be treated as one continuous term pursuant to General Statutes § 18-7.[2] The issue in *McCarthy* concerned whether, in estimating the amount of good time, the prisoner would receive a credit at the rate of ten days or fifteen days per month for each month of his sentence. Under § 18-7a (a) if his sentence was considered to be over five years, the factor was to be fifteen days for each month of the sentence over five years; if less than five years, the ten day factor would be used. We held in *McCarthy* that the prisoner's six consecutive one-year sentences should be treated as ''one continuous term'' for the purposes of estimating the amount of commutation. That holding was based on our finding that §§ 18-7 and 18-7a (a) should ''peacefully coexist.'' Id., 578.

In *Howard* v. *Commissioner of Correction*, 230 Conn. 17, 644 A.2d 874 (1994), the issue concerned whether forfeited good time that is later restored should be *credited* pursuant to § 18-7a (c) against the petitioner's concurrent sentences imposed after the good time had been earned. We held that, under *McCarthy*, multiple sentences covered by § 18-7a (c)[3] must be treated as one continuous term for purposes of restoring or crediting good time. *Howard* v. *Commissioner of Correction*, supra, 21. Our reasoning was that § 18-7 ''makes no distinction between convictions that result in consecutive sentences and those that result in concurrent sentences.'' Id., 22.The question in *Howard*, however, was not whether § 18-7 makes distinctions between consecutive sentences and concurrent sentences. The question properly was whether, for purposes of § 18-7a (c), § 18-7 applies not only to the *estimating of the amount of good time*; see *McCarthy* v. *Commissioner of Correction*, supra, 217 Conn. 568; but also to the *crediting of good time* to subsequently imposed sentences. *Howard* did not discuss that issue, but simply held that § 18-7 requires the crediting of previously earned good time to subsequently imposed concurrent sentences.

I would hold that, whether imposed consecutively or concurrently, multiple sentences should not be construed as one continuous term for the purposes of crediting good time pursuant to § 18-7a (c), especially when the result is that a prisoner may earn a reduction in a sentence before a single day of that sentence is served. To rule otherwise is to ignore the statutory language in § 18-7a (c) that any reduction in sentence is to be earned ''as such sentence is served. . . .''

This conclusion is supported by the policy behind § 18-7a (c), which was discussed at length in *Seno* v. *Commissioner*, 219 Conn. 269, 593 A.2d 111 (1991). We noted in that case that § 18-7a (c) was enacted in order to end the practice of crediting a prisoner's good time at the outset of a prisoner's sentence on the basis of the full sentence imposed by the sentencing court, a practice known as ''posting.'' Id., 275, 277. We found that § 18-7a (c) ''was designed to attain two related objectives. First, the legislature sought to return to the original concept behind good time, that is, the concept of reward for good behavior.'' Id., 277. ''The legislature's second objective was to eradicate an irrational consequence of the posting system. Because, under the posting system, good time is credited at the outset of a sentence, some prisoners receive good time for time that they, in fact, never serve.'' Id., 278. We then pointed out that ''the *predominant* purpose of § 18-7a (c) was to eliminate the possibility of prisoners earning good time for time that is never served.'' (Emphasis added.) Id. The legislature recognized that the control of prisoners is a continuing problem that must be addressed. The good time credit system was one ''carrot and stick''

method that enabled the warden to keep peace among the prison population, which includes many violent prisoners.[4]

I would conclude that the procedure for crediting good time mandated by § 18-7a (c) is different from the estimation formula contemplated by §§ 18-7a (a) and (b). Our holding in *Howard* ignores this basic distinction. Under the majority's ruling in this case, as in *Howard*, a prisoner will be able to credit good time earned on one sentence against a later sentence before he begins serving the later sentence. That result is directly contrary to the intent of the legislature in enacting § 18-7a (c), that good time be earned while serving a sentence. Therefore, I would hold that the legislature did not intend for § 18-7 to apply to § 18-7a (c) for purposes of crediting good time. Accordingly, I would overrule *Howard*.

The majority acknowledges that *Payton* v. *Albert*, 209 Conn. 23, 547 A.2d 1 (1988), may be interpreted as prohibiting the transfer of presentence good time credit between sentences, and overrules it to that extent. See footnote 44 of the majority opinion. Unlike the majority, I would apply the reasoning of *Payton* to both presentence good time and the statutory good time in this case.

Accordingly, I would hold that the petitioner was required to start earning good time as to the subsequently imposed concurrent sentence on the date that he started serving that sentence. I would also hold that the petitioner was required to start earning good time as to the subsequent one year consecutive sentence on the date that he started serving that sentence.

The majority's holding allows prisoners to receive good time credit in advance of serving a sentence and is contrary to the public policy purpose behind § 18-7a (c).

Accordingly, I dissent.

[1] See footnote 8 of the majority opinion for the text of General Statutes § 18-7a (a).

[2] The relevant portion of General Statutes § 18-7 provides: "When any prisoner is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuous term *for the purpose of estimating the amount of commutation which he may earn* under the provisions of this section. . . ." (Emphasis added.)

[3] See footnote 8 of the majority opinion for the text of General Statutes § 18-7a (c).

[4] I recognize that we have held that General Statutes § 18-100d rendered good time statutes inapplicable to persons sentenced to a term of imprisonment for any crime committed on or after October 1, 1994. See *Velez* v. *Commissioner of Correction*, 250 Conn. 536, 552, 738 A.2d 604 (1999). Nevertheless, the fact that good time has been abolished does not contradict the policy reasons underlying the good time statutes.