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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SIMON CALVIN SIMMS-HIATT, Petitioner, v. J. ENGLEMAN, Respondent.	No. CV 22-09006-DOC (DFM) Report and Recommendation of United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable David O. Carter, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

Petitioner Simon Calvin Simms-Hiatt, a federal prisoner proceeding pro se, constructively filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 in the United States District Court for the District of Arizona in October 2022. See Dkt. 1. Petitioner filed the operative Amended Petition on November 18, 2022. See Dkt. 4 ("Petition").[1] Because Petitioner is currently in

[1] Initially, Petitioner filed a "Motion Under Compassionate Release 18 U.S.C. § 3582(c)(1)(A)(i) Pursuant to Sentence Error of Rule 18 U.S.C. § 3583(a)" in his underlying criminal case in July 2022. See Dkt. 3 at 1; United

custody at the Federal Correctional Institution-Terminal Island ("FCI-Terminal Island") in San Pedro, California, this action was transferred to this Court. See Dkt. 6.

In the Petition, Petitioner challenges how the Bureau of Prisons ("BOP") has calculated his sentence. See Petition at 1.[2] Specifically, he contends that the BOP has "refused to honor [a] court order to run [his] state and federal sentences concurrently." Id. at 4. He claims that he is owed "slightly over 17 months" in additional credit toward his federal sentence. Id. at 4, 25. He seeks the application of the alleged "missing 17 months" of credit toward his federal sentence. Id. at 9. Separately, Petitioner also asserts that he suffers from several

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States v. Hiatt, No. CR 19-00777-PHX-SPX (D. Ariz. filed July 7, 2019), ECF No. 49. In August 2022, the Honorable Steven P. Logan, United States District Judge, issued an order explaining that because the claims in the motion related to the calculation of Petitioner's sentence, they were not properly brought under § 3582, and directing the Clerk to file the motion as a § 2241 petition in a separate civil action. See Dkt. 3 at 1; Hiatt, supra, ECF No. 51. The Clerk opened a separate civil case, but the action was dismissed without prejudice due to Petitioner's failure to keep the district court apprised of his whereabouts. See Dkt. 3 at 1-2; Hiatt v. United States, No. CV 22-01380-JAT-JZB (D. Ariz. filed Aug. 16, 2020).

Meanwhile, in September 2022, Petitioner filed an "Amended Motion for Compassionate Release" in his underlying criminal case. See United States v. Hiatt, supra, ECF No. 53. Judge Logan issued an order in October 2022, again directing the Clerk to refile the motion as a § 2241 petition in a separate civil action (the instant action). Upon the opening of this action, the Honorable James A. Teilborg, Senior United States District Judge, issued an order requiring Petitioner to submit an amended § 2241 petition using the court-approved form. See Dkt. 3 at 2.

[2] Except for citations to Respondent's Declaration by Deborah Colston and attached exhibits (Dkt. 14-2), all citations to page numbers refer to the CM/ECF pagination.

medical conditions and fears contracting COVID-19. See id. at 5. He requests compassionate release to obtain medical treatment on his own. See id. at 9.

On January 18, 2022, this Court issued an Order Requiring Response to Petition. See Dkt. 9. Respondent J. Engleman, Warden of FCI-Terminal Island, filed an Answer on March 20, 2023. See Dkt. 14 ("Answer"). In it, Respondent argues that (1) the Petition should be denied because Petitioner is not entitled to additional sentence credits; and (2) Petitioner's request for compassionate release is not properly before this Court. See id. at 9-15. In support of the Answer, Respondent also filed a Declaration by Deborah Colston and attached exhibits. See Dkt. 14-2 ("Colston Decl."). Petitioner did not file a Traverse.

For the reasons discussed below, the Court recommends that the Petition be denied and this action dismissed with prejudice.

II. FACTUAL BACKGROUND

On November 19, 2018, Petitioner was arrested by Arizona Tribal authorities for (i) possessing or furnishing narcotics; (ii) carrying a concealed weapon (handgun); and (iii) driving violations (suspended license). See Dkt. 1 at 1; Colston Decl. ¶ 4; Ex. 1 at 1, 5.[3] On March 8, 2019, Petitioner pleaded guilty to these charges and was sentenced in the Tribal Court of the Colorado River Indian Tribes ("CRIT") to a term of 635 days' imprisonment, with 110 days of credit for time served pending disposition of that sentence. See Colston Decl. ¶ 5; Ex. 1 at 2-8.

On July 2, 2019, Petitioner was indicted in federal court on one count of possession with intent to distribute methamphetamine (in violation of 21

[3] Because the operative Petition lacks several factual allegations that were included in Petitioner's earlier filing (his "Amended Motion for Compassionate Release"), the Court refers to the earlier filing where necessary to understand Petitioner's claims.

U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii)) and one count of use of a firearm in relation to a drug trafficking crime (in violation of 18 U.S.C. § 924(c)(1)(A)(i)). See United States v. Hiatt, supra, ECF No. 1.[4] On July 25, 2019, while Petitioner was in CRIT custody serving his Tribal sentence, he was transferred into federal custody under a writ of habeas corpus ad prosequendum issued by the U.S. District Court for the District of Arizona. See Dkt. 1 at 1; Colston Decl. ¶ 6; Ex. 3.

On March 13, 2020, Petitioner pleaded guilty to a lesser included offense of the first count of the indictment (possession with intent to distribute methamphetamine). See Plea Agreement, Hiatt, supra, ECF No. 48. On April 5, 2021, Judge Logan sentenced Petitioner to a term of 108 months' imprisonment and 48 months of supervised release. See Judgment, Hiatt, supra, ECF No. 46; see also Dkt. 1 at 1; Colston Decl., Ex. 5.[5] The Judgment stated that Petitioner would receive "credit for time served" and that his federal sentence would "run concurrently with the undischarged term of custody in Colorado River Indian Tribal Court." Id. at 1.

Petitioner's Tribal sentence expired on August 13, 2020, while he was still in federal custody. See Colston Decl., ¶ 7, Ex. 4.

III. DISCUSSION

Liberally construed, the Petition appears to both (1) challenge the BOP's calculation of Petitioner's sentence under 28 U.S.C. § 2241; and (2) move the

[4] Under Federal Rule of Evidence 201, the Court takes judicial notice, on its own, of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

[5] While the sentencing court initially scheduled Petitioner's sentencing hearing for June 1, 2020, see Hiatt, supra, ECF No. 26, Petitioner filed several motions to continue this hearing, each of which was granted, see Hiatt, supra, ECF Nos. 29-39.

Court for compassionate release under 18 U.S.C. § 3582(c)(1)(A). See Petition at 4-5. The Court addresses each component of the Petition in turn.

A. Challenge to Sentence Calculation

1. Applicable Law

Under 28 U.S.C. § 2241, a district court may grant habeas relief to a federal prisoner who is in custody in violation of federal law. A petition challenging the manner, location, or conditions of a sentence's execution is brought under § 2241 in the custodial court. See Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000). The BOP's calculation of sentencing credit is an issue pertaining to the execution of a sentence which a habeas petitioner may challenge through such a petition. See Zavala v. Ives, 785 F.3d 367, 370 n.3 (9th Cir. 2015).

After a defendant begins his federal sentence, computation of that sentence falls within the Attorney General's responsibilities, which are exercised through the BOP. See United States v. Wilson, 503 U.S. 329, 333-34 (1992); 28 C.F.R. § 0.96. The BOP is thus responsible for implementing those statutes concerning the computation of federal sentences. Relevant here, the calculation of prior custody credits is governed by 18 U.S.C. § 3585, which provides:

> **(a) COMMENCEMENT OF SENTENCE.—**
> A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.
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> **(b) CREDIT FOR PRIOR CUSTODY.—**A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—
>
> > **(1)** as a result of the offense for which the sentence was imposed; or

> **(2)** as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;
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> that has not been credited against another sentence.

Under subsection (a), a federal sentence does not commence until the federal government has "both physical custody of the defendant and the primary jurisdiction necessary to enforce the sentence." Johnson v. Gill, 883 F.3d 756, 764 (9th Cir. 2018). "As a general rule, the first sovereign to arrest a defendant has priority of jurisdiction for trial, sentencing, and incarceration." Thomas v. Brewer, 923 F.2d 1361, 1365 (9th Cir. 1991); see also Ponzi v. Fessenden, 258 U.S. 254, 260 ("The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose."). "A sovereign's priority terminates when the sentence expires, charges are dismissed, or the prisoner is allowed to go free." Johnson, 883 F.3d at 765.

2. Summary of Parties' Contentions

Petitioner contends that the BOP has "ignored [his] incarcerated time . . . while crediting other dates." Petition at 4. Specifically, Petitioner appears to argue that he is owed 524 days of credit toward his federal sentence based on: (1) time spent serving his Tribal sentence from March 8, 2019, through July 24, 2019; (2) time spent being transferred to federal custody from July 25, 2019, through July 29, 2019; and (3) time spent in federal custody between July 30, 2019, through August 13, 2020.[6] See id. at 25.

[6] In the Petition, Petitioner wrote "August 13, 2019," but calculated the total time between this date and July 30, 2019, as 380 days. See id.

According to Respondent, to compute Petitioner's federal sentence, the BOP first determined that his sentence commenced on April 5, 2021, the day on which it was imposed. See Answer at 8; Colston Decl. ¶ 10. The BOP then awarded Petitioner credit for time spent in federal custody from the date his Tribal sentence expired until the day before his federal sentence was imposed (August 14, 2020, through April 4, 2021). See Colston Decl. ¶ 10, Ex. 6 at 3.

Previously, the BOP erroneously documented Petitioner's Tribal sentence expiration date as October 31, 2020. See Petition at 19-20. In response to Petitioner's Central Office Administrative Remedy Appeal, the BOP verified the release date as August 13, 2020, and updated Petitioner's sentence computation to add an additional 79 days of credit toward his federal sentence. See id.; see also Answer at 8 n.3; Colston Decl. ¶ 12.

In addition, Respondent explains that previously, Petitioner had received credit against his federal sentence for the time he spent in Tribal custody from the date of his arrest through the day before his Tribal sentence was imposed (November 19, 2018, through March 7, 2019). See Answer at 8; Colston Decl. ¶ 11. In response to this action, the Designation and Sentence Computation Center ("DSCC") reviewed the computation of Petitioner's presentence credits and determined that Petitioner was not entitled to credit against his federal sentence for that time. See Colston Dec. ¶ 11. The DSCC has removed those 109 days of credit and recalculated Petitioner's sentence accordingly. See id.

Petitioner's sentence computation was last certified on March 1, 2023. See id., Ex. 6. Petitioner's projected release date (assuming he earns all remaining available Good Conduct Time Credit and all remaining available

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Accordingly, the Court proceeds under the assumption that Petitioner intended to write "August 13, 2020."

First Step Act Time Credits) is October 23, 2027. See id., Ex. 6 at 2.[7] Respondent argues that the additional credit Petitioner seeks is not permitted under § 3585(b) or under the BOP's policies. See Answer at 9-13.

3. Analysis

As an initial matter, the Court concludes that, notwithstanding the language in the sentencing court's judgment, it was impossible for Petitioner's Tribal and federal sentences to run concurrently. Petitioner's Tribal sentence began on March 8, 2019, and while he was serving this sentence, he was transferred to federal custody on July 25, 2019, pursuant to a writ of habeas corpus ad prosequendum. See Colston Decl. ¶ 6; Ex. 3; Dkt. 1 at 1. As the Ninth Circuit explained in Thomas:

> When an accused is transferred pursuant to a writ of habeas ad prosequendum he is considered to be "on loan" to the federal authorities so that the sending [sovereign's] jurisdiction over the accused continues uninterruptedly. Failure to release a prisoner [from federal custody] does not alter that "borrowed" status, transforming [him] into a federal prisoner.

923 F.2d at 1367 (citation omitted).

Thus, although Petitioner was in federal custody following his transfer, CRIT retained primary jurisdiction over him until the completion of his Tribal sentence on August 13, 2020. Because the federal government could not have both physical custody and primary jurisdiction over Petitioner until his Tribal sentence expired, Petitioner's federal sentence could not have commenced until August 14, 2020. See Johnson, 883 F.3d at 764. Indeed, here Petitioner was not sentenced until April 5, 2021, months after his Tribal sentence expired,

[7] Respondent confirms that Petitioner has exhausted the BOP's administrative remedy process in connection with the challenges to his sentence calculation asserted in the Petition. See Colston Decl. ¶¶ 12-13, Ex. 7; see also Petition at 11-20; 28 C.F.R. §§ 542.10 et. seq.

and the BOP awarded him presentence credit from August 14, 2020, through April 4, 2021. See Hiatt, supra, ECF No. 46; Colston Decl. ¶ 10, Ex. 6 at 3. Had Petitioner's sentencing hearing occurred in June 2020 as originally scheduled, it appears his sentences could have run concurrently. See Hiatt, supra, ECF No. 26. However, by the actual date Petitioner's federal sentence was imposed, there was no Tribal sentence to which Petitioner's federal sentence could run concurrently.

Under § 3585(b), a prisoner cannot "receive a double credit for his detention time." Wilson, 503 U.S. at 337. Because Petitioner's Tribal and federal sentences did not run concurrently, and because the time Petitioner spent in Tribal and federal custody from March 8, 2019, through August 13, 2020, was credited towards his Tribal sentence, Petitioner could not again credit that time toward his federal sentence.[8]

Petitioner is also not entitled to additional credits under BOP policy exceptions to § 3585(b). The BOP has adopted a policy of awarding double credits in limited circumstances, as set forth in BOP Program Statement 5880.28, Ch. 1, Sec. 3(c). This policy is derived from two judicially-created exceptions to § 3585(b) set forth in Willis v. United States, 438 F.2d 923 (5th Cir. 1971), and Kayfez v. Gasele, 993 F.2d 1288 (7th Cir. 1993). Under the Program Statement, the BOP will award presentence custody credits toward a

[8] From the sentencing documents available, there is no indication that the sentencing court intended to award Petitioner double credit for any time served prior to August 14, 2020. Even if it had, the sentencing court lacked the authority to do so. See Wilson, 503 U.S. at 334 (holding that § 3585(b) does not authorize a district court to compute credits at sentencing); see also United States v. Peters, 470 F.3d 907, 909 (9th Cir. 2006) (holding that district court lacked authority under § 3585(b) to grant defendant credit for time served after arrest, explaining that "the prerogative to grant credits in the first instance rests with the Attorney General, acting through the [BOP]").

federal sentence, even where they have already been credited to a concurrent non-federal sentence, "in two narrow circumstances where the BOP has determined [based on a comparison of the full terms of the two concurrent sentences] that the credits will be of 'no benefit' to the federal prisoner." Cruz v. Sanders, No. 07-04628, 2008 WL 5101021, at *2 (C.D. Cal. Dec. 2, 2008); see also BOP Program Statement 5880.28, Ch. 1, Sec. 3(c).[9]

Respondent admits that the BOP previously credited Petitioner with time served in Tribal custody prior to the start of his Tribal sentence (November 19, 2018, through March 7, 2019) based on an erroneous belief that Petitioner qualified for Kayfez/Willis credits. See Answer at 12. However, the exceptions set forth under the Program Statement do not apply here because, as discussed above, Petitioner's sentences did not run concurrently. See Henderson v. McGrew, No. 12-03858, 2012 WL 5188043, at *5 (C.D. Cal. Sept. 13, 2012), ("Petitioner does not qualify for such Willis time credits because these are only applied when an inmate's state and federal sentences run concurrently and here, the state sentence expired prior to the commencement of the federal sentence."), report and recommendation adopted, 2012 WL 5188039 (C.D. Cal. Oct. 16, 2012).

Because Petitioner is not entitled to any additional credit against his federal sentence, the Court cannot grant the relief sought in the Petition. Accordingly, dismissal of the Petition is warranted.

B. Motion for Compassionate Release

Petitioner appears to move the Court for compassionate release under 18 U.S.C. § 3582(c)(1)(A). See Petition at 5. This Court, however, cannot address

[9] Since BOP policies for computing federal sentences are "akin to an interpretive rule," Reno v. Koray, 515 U.S. 50, 61 (1995) (citation omitted), they are entitled to a measure of deference, see Skidmore v. Swift & Co, 323 U.S. 134 (1944); Tablada v. Thomas, 533 F.3d 800, 806 (9th Cir. 2008).

this claim. Under § 3582(c), all motions for sentencing reductions, including motions for compassionate release, must be filed in the sentencing court. See 18 U.S.C. § 3582(c)(1)(A); Medina v. Birkholz, No. 22-08804, 2023 WL 2614515, at *2 (C.D. Cal. Mar. 23, 2023) (collecting cases recognizing the same). Here, Petitioner was sentenced in the Arizona District Court. See Hiatt, supra, ECF No. 46.

Moreover, Petitioner has not alleged exhaustion of his administrative remedies with respect to this request. A sentencing court may consider a motion for sentence reduction by a prisoner only "after [he] has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on [his] behalf or the lapse of 30 days from the receipt of such a request by the warden of [his] facility, whichever is earlier . . . ." 18 U.S.C. § 3582(c)(1)(A); see also Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012) ("As a prudential matter, courts require that habeas petitioners exhaust all available judicial and administrative remedies before seeking relief under § 2241."). Here, although Petitioner has demonstrated administrative exhaustion of his sentencing credit claim, there is no indication that he has filed any grievances in connection with his request for compassionate release.

If Petitioner seeks compassionate release under § 3582(c)(1)(A), he must comply with the requirements set forth in the statute and file a motion in the correct court.[10] This Court, however, lacks any basis to provide relief to Petitioner.

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[10] As discussed above, Petitioner made multiple attempts to move for compassionate release in the sentencing court. See Hiatt, supra, ECF Nos. 49, 53. As the sentencing court explained, however, the claims Plaintiff asserted in those motions related to the calculation of his sentence and thus were not properly brought under § 3582. See Hiatt, supra, ECF Nos. 51, 54. Petitioner is advised that, should he choose to pursue a renewed motion for compassionate release, such a motion must identify "extraordinary and compelling reasons"

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) approving and accepting this Report and Recommendation; (2) dismissing Petitioner's request for compassionate release without prejudice to Petitioner properly filing a motion for reduction in sentence under 18 U.S.C. § 3582(c)(1)(A) in the sentencing court; and (3) directing that judgment be entered denying the Petition and dismissing this action with prejudice.

Date: June 26, 2023

DOUGLAS F. MCCORMICK
United States Magistrate Judge

to warrant a reduction in his sentence, see 18 U.S.C. § 3582(c)(1)(A), and cannot be used to challenge the calculation of his sentence credits.