

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REUBAN EASON,	:	CIVIL ACTION
	:	NO. 06-2953
Petitioner,	:	
	:	CRIMINAL ACTION
v.	:	NO. 01-731
	:	
UNITED STATES	:	
	:	
Respondent.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

December 6, 2006

I. INTRODUCTION

Before the Court is Reuban Eason's habeas corpus petition filed pursuant to 28 U.S.C. § 2255. Petitioner is seeking credit for time spent in custody prior to federal sentencing. He claims that because this Court sentenced him to 72 months of imprisonment to run concurrently with a state sentence arising from the same incident, he is entitled to a credit toward his federal sentence for time spent in custody before his federal sentencing pursuant to 18 U.S.C. § 3585(b). This claim is properly brought, not pursuant to 28 U.S.C. § 2255, but rather under 28 U.S.C. § 2241. Even if the Court is to consider Eason's petition as one brought under § 2241, it must nevertheless dismiss Eason's claim as he has failed to exhaust his administrative remedies.

II. BACKGROUND

On August 14, 2001 Rueban Eason was arrested in Philadelphia and charged with resisting arrest and several violations of the Violation of Uniform Firearm Act. Subsequently, the state charges were dismissed. On December 4, 2001, a Federal Grand Jury indicted Eason on charges of possession of a firearm in violation of 18 U.S.C. § 922(g)(1) as a result of the August 14, 2001 incident. He was taken into federal custody on January 3, 2002.¹ On March 5, 2002, Eason pled guilty to the charge listed in the December 4, 2001 indictment. The August 14, 2001 incident was a violation of Eason's previously imposed state probation and on July 26, 2002, Eason was sentenced to 4 to 8 years state imprisonment.

On September 11, 2002, Eason was sentenced by this Court to 72 months imprisonment, to run concurrently with the state (4 to 8 year) sentence. In June, 2006, Eason was returned to state custody, after serving the minimum of his 4 to 8 year state sentence.

Eason now seeks to have the time he spent in custody,

¹ In petitioner's motion (doc. no. 38), he seeks credit beginning on December 4, 2001, yet in his memorandum in support of his petition (doc. no. 39), he states that he was taken into federal custody on December 6, 2001. The government, however, maintains that Eason was not brought into federal custody until January 3, 2002. As Eason has not exhausted his administrative remedies before filing this petition, this memorandum does not reach the merits of Eason's claim. Thus, this factual dispute does not affect the current analysis.

December 4, 2001² to September 11, 2002 before being federally sentenced, credited toward his 72 month sentence imposed by this Court.

Eason, proceeding pro se, attempted to petition this Court for habeas relief on July 6, 2006. However, because Eason did not file the requisite current standard 28 U.S.C. § 2255 form, this Court denied that petition without prejudice on July 11, 2006. On July 24, 2006, Eason returned the correct forms and this Court reopened the civil action.

III. DISCUSSION

Section 2255 allows a prisoner in custody to attack his sentence if it was imposed in violation of the Constitution or statute, the court lacked jurisdiction to impose it, it exceeds the maximum allowed by law, or it is otherwise subject to collateral attack. 28 U.S.C. § 2255. A petition contesting the calculation of credit for time served, however, is properly brought, not under § 2255, but rather under § 2241, as it does not attack the legality of the sentence itself, but merely its execution. See United States v. Chavez-Gavina, No. 00-63, 2002 WL 389274 *1 (E.D. Pa. Mar. 12, 2002) (Kelly, J.) (“[T]he appropriate jurisdictional basis to challenge sentence credit and sentence computation is 28 U.S.C.

² Petitioner seeks credit from December 4, 2001 until September 11, 2002. However, the Government states that he was not actually taken into federal custody until January 3, 2002.

§ 2241, federal habeas corpus."); Rios v. Wiley, 201 F.3d 257, 270-71 (3d Cir. 2000) (Motion under § 2241 is appropriate to challenge the execution of a sentence, in contrast to § 2255, which permits a challenge on constitutional grounds to the imposition of the sentence); United States v. Mares, 868 F.2d 151, 151-52 (5th Cir. 1989) (A petitioner bringing a claim for time served prior to the date of a federal sentence must proceed via a petition for habeas corpus under 28 U.S.C. § 2241); United States v. Johnson, 624 F. Supp. 1191, 1195 (E.D. Pa. 1986) (Luongo, J.) (Claim for time credit challenges the execution of the sentence by federal prison authorities, not validity of sentence imposed; thus § 2255 does not provide a basis for relief, and the claim should be raised under § 2241); United States v. Grimes, 641 F.2d 96, 99 (3d Cir. 1981) (claims for calculation of credit for time served challenge the execution of sentence and are appropriately raised under § 2241, not under § 2255); Soyka v. Alldredge, 481 F.2d 303, 304 (3d Cir. 1973) (holding that § 2255 is inapplicable when the claim involves computation of time served on sentence)³.

³The Third Circuit in Soyka went on to state:

Rather than collaterally attacking the sentence, he merely seeks a determination that certain time spent in custody should be applied to the sentence the validity of which is not in question. If Soyka were to prevail on the merits, the credits would apply against the sentence as imposed - they cannot be implemented by tampering with or correcting the sentence itself. The case at bar is thus akin to the primary historic use of the writ of habeas corpus as embodied by the

Even if the Court is to view Eason's petition as one filed pursuant to § 2241, it nevertheless must be denied.⁴ A federal prisoner must exhaust his administrative remedies before petitioning for a writ of habeas corpus pursuant to § 2241. Moscato v. Federal Bureau of Prisons, 98 F.3d 757, 760 (3d Cir. 1996); see also Callwood v. Enos, 230 F.3d 627, 634 (3d Cir. 2000) ("we have consistently applied an exhaustion requirement to claims brought under § 2241"). If a petitioner has failed to exhaust his administrative remedies prior to filing a § 2241 petition, the District Court may, in its discretion, either "excuse the faulty exhaustion and reach the merits, or require the petitioner to exhaust his administrative remedies before proceeding in court." Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990), abrogated in part on other grounds by Reno v. Kay, 515 U.S. 50 (1995). Having neither addressed his issues with the staff at his facility nor utilized the Bureau of Prisons's ("BOP") Administrative Remedy Program to grieve decisions made by the BOP, this Court will dismiss Eason's habeas corpus petition and require him to exhaust

Constitution as well as 28 U.S.C. § 2241, for Soyka's attack upon the legality of his future detention based on the claim that respondent threatens to hold him beyond the expiration date of his sentence.

481 F.2d at 304-05 (internal citations omitted).

⁴ Given the Court has construed Eason's petition as filed pursuant to § 2241, the teachings of United States v. Miller, 197 F.3d 644, 652 (3d Cir. 1999), are not applicable.

his administrative remedies before proceeding in court.

IV. CONCLUSION

Eason's petition for habeas relief is denied. Although Eason brought his petition under § 2255, because the petition attacks the execution of the sentence rather than the legality of the sentence itself, it is properly brought pursuant to § 2241. When the Court views it as such, Eason's claim will nevertheless be dismissed, as he has failed to exhaust his administrative remedies before filing his petition with this Court.

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	:	
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O R D E R

AND NOW, this **6th** day of **December 2006**, it is hereby **ORDERED** that Reuban Eason's petition for habeas corpus relief pursuant to 28 U.S.C. § 2255⁵ (doc. no. 38) is **DISMISSED without**

⁵ Although Eason filed his petition under 28 U.S.C. § 2255, he seeks to challenge the execution of his sentence, rather than the legality of the sentence itself. Therefore, his petition should have been filed under 28 U.S.C. § 2241. Given the Court has construed Eason's petition as filed pursuant to § 2241, the teachings of United States v. Miller, 197 F.3d 644, 652 (3d Cir. 1999), are not applicable.

prejudice on grounds that petitioner has failed to exhaust his administrative remedies.

IT IS FURTHER ORDERED that Reuban Eason's Petition for Time Credit (doc. no. 39) is **DENIED** as it is duplicative as the above-referenced petition.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.