

DLD-134

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-4674

WILSON GORRELL,
Appellant

v.

JOHN YOST, Warden

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civ. No. 09-cv-00250)
District Judge: Honorable Kim R. Gibson

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
March 10, 2011
Before: BARRY, FISHER AND ROTH, Circuit Judges

(filed: May 3, 2011)

OPINION

PER CURIAM

Wilson Gorrell, a federal inmate, appeals pro se from the District Court's denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Because we conclude that this appeal presents no substantial question, we will summarily affirm. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

I.

Gorrell was arrested in December 2002 in the District of Columbia and charged in federal court for possession of methamphetamine with intent to distribute. While on bail, in July 2004, he was arrested in New York and charged in federal court for conspiracy to distribute methamphetamine. He remained in custody until December 2004, when he was sentenced in the District of Columbia to ninety-seven months of imprisonment. Because his New York charge was pending, he remained in the Marshal's custody for the next thirteen months. In January 2006, the Southern District of New York sentenced him to a term of 120 months of imprisonment, to run concurrent to his prior sentence. He was then designated to a prison. The Report and Recommendation states that the Federal Bureau of Prisons ("FBOP") has determined that he must serve an aggregate of 133 months and 24 days, assuming he receives all statutory good time credit, and projects that he will be released in April 2014.

Gorrell challenged the computation of his sentence. He claimed that the FBOP miscalculated his term of imprisonment, by failing to credit him for 526 days in custody before he began serving his sentence. He argued that his first sentence should not be construed as beginning until his second sentence was imposed, so that all his time in custody will count against both sentences.

The Magistrate Judge issued a Report and Recommendation recommending a denial. After considering Gorrell's objections, the District Court adopted the Report and

Recommendation and denied the petition. Gorrell filed a timely notice of appeal.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291. A certificate of appealability is not required to appeal from the denial of this § 2241 petition. See Burkey v. Marberry, 556 F.3d 142, 146 (3d Cir. 2009) (citing United States v. Cepero, 224 F.3d 256, 264-65 (3d Cir. 2000)). We exercise plenary review over the District Court’s legal conclusions, and review its factual findings for clear error. See Vega v. United States, 493 F.3d 310, 314 (3d Cir. 2007).

III.

Pursuant to 18 U.S.C. § 3585(a), “a sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to . . . the official detention facility at which the sentence is to be served.” A defendant receives credit for time spent in custody “prior to the date the sentence commences . . . that has not been credited against another sentence.” § 3585(b)(2).

Gorrell received one year, one month, and twenty-four days of credit against his first, ninety-seven month sentence for time spent in custody from his arrest until his release on bail and from his New York arrest until his first sentence began in December 2004. He asserts that, under § 3585(a), his first sentence did not “commence” until he was designated to a facility after his second sentencing in January 2006. He argues that, as a result, all of his prior custody should be credited against his second, 120 month sentence. Gorrell is mistaken. Pursuant to § 3585(a), he was “in custody awaiting

transportation . . . to the official detention facility” when he was sentenced in the District of Columbia in December 2004. As such, his first sentence began on that date, and he properly received credit toward that sentence for time spent in pre-trial custody. Under § 3585(b)(2), he cannot earn credits against his second sentence, which commenced in January 2006, for time in custody beyond the commencement of his first sentence. We agree with the District Court that he cannot receive a prior custody credit windfall because he committed a second offense in a different district while on pretrial release from the first offense. Accordingly, the District Court properly concluded that Gorrell is not entitled to a recalculation of his sentence based on prior custody credits.

Because the appeal does not present a substantial question, we will summarily affirm the District Court’s order denying the petition. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.