

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION**

UNITED STATES OF AMERICA, v. ASHLEY WRIGHT, <div style="text-align: right;">Defendant.</div>	: : : : : : : : :	Case No. 3:20-cr-36-CAR-CHW-3
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REPORT & RECOMMENDATION

Defendant Ashley Wright has filed a motion seeking credit for time served when her state parole was revoked and prior to her guilty plea in this case. (Doc. 305). Defendant specifically requests credit for time served between February 19, 2019, a date she alleges she was served with a federal agency warrant, and November 17, 2020, the date her parole expired. Defendant was brought to federal custody for arraignment under a writ of habeas corpus ad prosequendam, as she was in state custody at the time following a parole revocation on a state court conviction, on October 8, 2020. PSR, Doc. 298, ¶¶ 9-10. Her maximum release date from state custody was November 17, 2020, after which she was released and commended pretrial services supervision. (*Id.*, ¶ 10). She remained on bond pending sentencing. (*Id.*) It appears from the record that Defendant is not entitled to credit for the time served in pretrial custody because that time was credited to her state sentence and parole revocation.

Procedurally, this Court lacks authority to grant the relief requested. The Court lacks authority to grant Defendant’s motion first because Defendant has not shown that she has exhausted administrative remedies through the Bureau of Prisons. “Authority to calculate credit for time served under section 3585(b) is vested in the Attorney General, not the sentencing court.” *United States v. Alexander*, 609 F.3d 1250, 1259 (11th Cir. 2010). The calculation of a term of

imprisonment, including credit for time served in official detention prior to the date of sentencing, is governed by 18 U.S.C. § 3585. Such calculations are an administrative function entrusted to the Bureau of Prisons, which “initially possesses the exclusive authority . . . to compute sentence credit awards after sentencing.” Rodriguez v. Lamer, 60 F.3d 745, 746 (11th Cir. 1995). *See also* United States v. Wilson, 503 U.S. 329 (1992). Because the granting of credit for time served is “in the first instance an administrative, not a judicial function,” a claim for credit for time served may be raised in a petition under 28 U.S.C. § 2241 only after the exhaustion of administrative remedies. United States v. Nyhuis, 211 F.3d 1340, 1345 (11th Cir. 2000) (quoting United States v. Flanagan, 868 F.2d 1544, 1546 (11th Cir. 1989)). Defendant’s motion is silent about any attempts to exhaust the administrative process with the BOP.

Even if Defendant had exhausted her administrative remedies, this Court would not have jurisdiction to hear her petition under Section 2241. A Section 2241 petition must be brought in the district court for the district in which the defendant is incarcerated. Fernandez v. United States, 941 F.2d 1488, 1495 (11th Cir. 1991). Because Defendant is incarcerated in the Northern District of Florida, a court in that district would be the appropriate forum for any Section 2241 petition concerning the calculation of Defendant’s sentence.

On the merits, the record indicates that Defendant is not entitled to the relief she requests, as it appears the time served for which she requests credit prior to her sentencing in this Court was credited toward her state sentence. 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.” 18 U.S.C. § 3585(a). A defendant may receive credit for time served in official detention prior to the date her sentence commences “as a result of the offense for which the sentence was imposed” or “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.” 18 U.S.C. § 3585(b)(1). Such credit is only available, however, if the time “has not been credited against another sentence.” 18 U.S.C. § 3585(b). Where state and federal sentences are imposed, time-served credit can only apply to one sentence.

The record in this case shows that Defendant was arrested on February 29, 2019, on a parole warrant, and her parole was revoked on March 22, 2019, on her state conviction for possession of methamphetamine with intent to distribute. PSR, Doc. 288, ¶¶ 68, 70. This revocation came after conduct involved in Count 1 of the indictment in this case. Defendant then served her maximum time for her parole violation before entering pre-trial supervision. Defendant was therefore still in state custody at the time she came into contact with federal agents and was arrested in February 2019 and when she came into federal custody on October 8, 2020. Therefore, the time period for which Defendant requests credit was properly credited to her state sentence.

Although it appears that Defendant’s claims lack merit, Defendant’s claims are properly brought in a petition under 28 U.S.C. § 2241 in the district of incarceration, following exhaustion of administrative remedies. Because there is no indication that Defendant has exhausted administrative remedies, and because this Court lacks jurisdiction to entertain a Section 2241 petition in this case, it is hereby **RECOMMENDED** that Defendant’s motion to receive credit for time served (Doc. 305) be **DISMISSED**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of

those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 23rd day of May, 2023.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge