

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

**UNITED STATES OF AMERICA**

**v.**

**DANIEL ERIC COBBLE,**

**Defendant.**

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**Case No. 5:14-cr-77-CDL-CHW**

**REPORT AND RECOMMENDATION**

Pending before the Court is Defendant Daniel Cobble's post-appeal motion to be resentenced. (Doc. 827). For the reasons explained below, it is **RECOMMENDED** that Defendant's motion be **DENIED**.

Defendant argues that he should be resentenced pursuant to 18 U.S.C. § 3582(c)(2) based on newly enacted sentencing guidelines that have been made retroactive by the Sentencing Commission. He has not, however, identified any such amended guideline that would lower his sentencing range. Instead, Defendant makes various arguments that might be relevant to the general sentencing factors of 18 U.S.C. § 3553(a). The Court has no authority to reconsider those sentencing factors following the entry of judgment.

"The authority of a district court to modify an imprisonment sentence is narrowly limited by statute," and a court may modify a sentence only in the limited circumstances set forth at 18 U.S.C. § 3582. *United States v. Phillips*, 597 F.3d 1190, 1194-95 (11th Cir. 2010). Section 3582 permits a court to modify a sentence in the following circumstances:

(1) Pursuant to 18 U.S.C. § 3582(b)(2), a sentence imposed in violation of the law or based on an incorrect application of the sentencing guidelines may be corrected

on appeal to the United States Court of Appeals under 18 U.S.C. § 3742.

(2) Pursuant to 18 U.S.C. § 3582(b)(2), a sentence may be corrected pursuant to the provisions of Rule 35 of the Federal Rules of Criminal Procedure. Rule 35(a) permits a sentencing court, within 14 days of sentencing, to “correct a sentence that resulted from arithmetical, technical, or other clear error.” Rule 35(b) authorizes a court to reduce a sentence upon motion by the government based on defendant’s substantial assistance in investigating or prosecuting another person.

(3) Pursuant to 18 U.S.C. § 3582(c)(1)(A), a court may modify a sentence upon motion by the Director of the Bureau of Prisons or upon motion by the defendant after exhausting administrative remedies, if “extraordinary and compelling reasons warrant such a reduction,” or in certain cases involving defendants over 70 years of age.

(4) Pursuant to 18 U.S.C. § 3582(c)(1)(B), a court may modify a sentence as “expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.”

(5) Pursuant to 18 U.S.C. § 3582(c)(2), a court may modify a sentence if the relevant sentencing guidelines have subsequently been lowered by the United States Sentencing Commission.

Because none of these provisions apply in this case, the Court has no authority to resentence Defendant.

The sentencing arguments that Defendant raises would have been without merit even if they had been raised at sentencing or on appeal. Defendant first contends that he “beat all charges”

in various state court indictments from Baldwin, Fulton, Cobb, and Cherokee Counties between 2014 and 2018. (Doc. 827, p. 2). The Presentence Investigation Report reflects that the cases Defendant references were either “pending” or on the “dead docket” at the time of sentencing (Doc. 739, pp. 24-26). As the PSR noted no conviction in those cases, they did not contribute any criminal history points and had no impact on Defendant’s guidelines sentencing range. Defendant further argues that most of his crimes were committed while he was in prison, “so apparently I am more a danger to the prison system than I am on the street.” (Doc. 827, p. 3). He also argues that all of the victims of his crimes were either from the government or his family, “so obviously I am not a danger to society as the Government is not society [and] my family is not society.” (*Id.*) Finally, he contends that “I am leaving USA immediately upon prison release to British consulate in Atlanta via asylum political request so obviously I can’t be a danger to USA society when I’m 3,000 miles across the ocean. (*Id.*, p. 4). These arguments are frivolous on their face.

Defendant’s motion may also be read to indicate that he thinks his federal sentence should be calculated to have begun in April 2013, when he committed the offense charged in the indictment, or possibly in March 2015, when he first came into federal custody.<sup>1</sup> (*Id.*) He acknowledges, however, that his federal sentence began on July 14, 2021, once he completed a state sentence from Wilcox County. (*Id.*, p. 2). As explained in the Court’s previous order (Doc. 819), the calculation of a term of imprisonment, is governed by 18 U.S.C. § 3585. Such calculations are an administrative function entrusted to the BOP, which “initially possesses the exclusive authority. . . to compute sentence credit awards after sentencing.” *Rodriguez v. Lamer*,

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<sup>1</sup> The record shows that Plaintiff first came into federal custody on March 26, 2015, pursuant to a writ of habeas corpus ad prosequendum to the Georgia State Prison in Reidsville, Georgia. (Doc. 6).

60 F.3d 745, 747 (11th Cir. 1995); *see also United States v. Wilson*, 503 U.S. 329 (1992). This means that the sentencing court is not vested with the authority to calculate credit for time served. *United States v. Alexander*, 609 F.3d 1250, 1259 (11th Cir. 2010). 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 does not indicate in his motion that he has pursued exhausting the administrative process with the BOP.

Even if Defendant had exhausted his administrative remedies, this Court would not have jurisdiction to hear his 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 District of South Carolina, 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, moreover, the record indicates that Defendant is not entitled to credit for time served in state or federal custody prior to judgment in this case and the completion of his state sentence in July 2021. 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 his 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).

In this case, the time Defendant served in federal custody prior to his sentencing in this Court was credited toward the state sentence that he was serving at the time of his indictment. Defendant was still subject to that sentence at the time he was sentenced in this case, on August 14, 2020. At some time after sentencing, Defendant was returned to state custody to complete his state sentence. In his motion, Defendant indicates that he “maxed out” his state sentence on July 14, 2021. (Doc. 827, p. 2). Upon his release from state custody, he would have been “received in custody” by the federal Bureau of Prisons. Because the Court ordered that Defendant serve his federal sentence consecutive to the prior state sentences, the record indicates that the Bureau of Prisons would correctly calculate Defendant’s sentence to begin running on the date he completed his state custody and was delivered to federal custody.

Based on the foregoing, it is **RECOMMENDED** that Defendant’s motion to be resentenced (Doc. 827) be **DENIED**.

### **OBJECTIONS**

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 30th day of August, 2023.

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