Elijah v. Dobbs

United States District Court for the District of South Carolina

July 29, 2021, Decided; July 29, 2021, Filed

CA No. 9:20-cv-03040-JD-MHC

Reporter
2021 U.S. Dist. LEXIS 159861; 2021 WL 3728370

Larone F. ***Elijah***, Petitioner, v. Bryan K. Dobbs, Respondent.

Counsel: [*1] ***Larone*** F ***Elijah***, Petitioner, Pro se, COLEMAN, FL.

For Bryan K Dobbs, Warden, Respondent: Marshall Prince, LEAD ATTORNEY, US Attorneys Office, Columbia, SC.

Judges: Molly H. Cherry, United States Magistrate Judge.

Opinion by: Molly H. Cherry

REPORT AND RECOMMENDATION

Petitioner ***Larone*** F. ***Elijah*** ("Petitioner"), a federal inmate incarcerated at the Federal Correctional Institution ("FCI") Williamsburg, petitions the Court pro se for a writ of habeas corpus under 28 U.S.C. § 2241. Respondent Bryan K. Dobbs ("Respondent") filed a Motion for Summary Judgment, ECF No. 8, and Petitioner filed a Response in Opposition, ECF No. 12. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), this matter was referred to the undersigned for a Report and Recommendation.

I. BACKGROUND

On October 25, 2007, Petitioner was sentenced in the United States District Court for the Eastern District of North Carolina, case number 7:07-CR-10-1-D, to a 108-month term of confinement and a five-year term of Supervised Release for Possession with Intent to Distribute more than five grams of Cocaine Base, a Quantity of Cocaine, a Quantity of Heroin, and a Quantity of Methylenedioxymethamphetamine. ECF No. 8-1 at 5-8.

Petitioner satisfied the 108-month term of confinement on May 23, 2014, **[*2]** and was released from the Federal Bureau of Prisons' ("BOP") custody. ECF No. 8-1 at 2, ¶ 7. His five-year term of Supervised Release commenced on May 23, 2014. ECF No. 8-1 at 2, ¶ 8.

On June 11, 2015, Petitioner was arrested by state authorities in Pitt County, North Carolina, for state offenses related to case number 4:15-CR-70-1-D, in the United States District Court for the Eastern District of North Carolina. ECF No. 8-1 at 2, ¶ 9. He was released by the state, via bond, on June 18, 2015. ECF No. 8-1 at 2, ¶ 9. The state charges were ultimately dismissed, but the federal charges in case number 4:15-CR-70-1-D remained pending.

Petitioner was arrested by federal authorities on July 10,

2015. ECF No. 8-1 at 2, ¶ 10; ECF No. 8-1 at 18. On August 17, 2015, Petitioner's Supervised Release term in case number 7:07-CR-10-1-D was revoked for his criminal conduct, and he was sentenced to a thirty-six-month term of confinement for the Supervised Release violation. ECF No. 8-1 at 21.

On March 7, 2017, Petitioner was sentenced in the United States District Court for the Eastern District of North Carolina, case number 4:15-CR-70-1-D, to a 108-month term of confinement for Possession with Intent **[*3]** to Distribute a Quantity of Cocaine, a Quantity of Heroin, and a Quantity of 3,4-Methylenedioxy-N-ethylcathinone. ECF No. 8-1 at 2, ¶ 12. The sentencing court ordered the 108-month term to be served consecutive to any other sentence. ECF No. 8-1 at 23-25.

The BOP computed Petitioner's sentences for the Supervised Release violation in case number 7:07-CR-10-1-D (thirty-six-month term) and the drug conviction in case number 4:15-CR-70-1-D (108-month term) as a 144-month single, aggregate term of confinement that commenced on August 17, 2015 (the date the thirty-six-month term of confinement for the Supervised Release violation was imposed). ECF No. 8-1 at 2, ¶ 13. The BOP credited Petitioner with forty-six days of prior credit time (jail credit) for time spent in official detention from June 11, 2015 (the date of his arrest by state authorities) through June 18, 2015 (the date he was released on bond by the state), and from July 10, 2015 (the date of his arrest by federal authorities) through August 16, 2015 (the day before the imposition of the revocation term). ECF No. 8-1 at 2, ¶ 13; ECF No. 8-1 at 33.

Petitioner has finished serving his revocation term in case number 7:07-CR-10-1-D, **[*4]** but he remains incarcerated in case number 4:15-CR-70-1-D. *See Elijah v. United States*, No. 4:15-CR-70-D, 2020 U.S. Dist. LEXIS 154053, 2020 WL 5028767, at *2 n.2 (E.D.N.C. Aug. 25, 2020). His projected release date is September 21, 2025. ECF No. 8-1 at 30-31.

Petitioner brought this action pursuant to 28 U.S.C. § 2241, seeking credit for time during which he was on Supervised Release, as well as the application of additional Good Conduct Time ("GCT") credit toward his sentence. Petitioner fully exhausted his administrative remedies before filing the Petition. *See* ECF No. 8-1 at 35-43.

II. LEGAL STANDARDS

A. Summary Judgment Standard

Summary judgment is appropriate if a party "shows there is no genuine dispute as to any issue of material fact" and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Under the framework established in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), the party seeking summary judgment shoulders the initial burden of demonstrating to the Court that there is no genuine issue of material fact. *Id.* at 323. Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, must demonstrate that specific, material facts exist which give rise to a genuine issue. *Id.* at 324.

Under this standard, the evidence of the non-moving party is to be believed and all justifiable **[*5]** inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). However, although the Court views all the underlying facts and inferences in the record in the light most favorable to the non-moving party, the non-moving "party nonetheless must offer some 'concrete evidence from which a reasonable juror could return a verdict in his [or her] favor.'" *Williams v. Genex Servs., LLC*, 809 F.3d 103, 109 (4th Cir. 2015) (quoting *Anderson*, 477 U.S. at 256). That is to say, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory or speculative allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. To survive summary judgment, the non-movant must provide evidence of every element essential to his action on which he will bear the burden of proving at a trial on the merits. *Celotex Corp.*, 477 U.S. at 322.

B. Habeas Corpus

Under established local procedure in this judicial district, a careful review has been made of this Petition **[*6]** pursuant to the Rules Governing Section 2254

Proceedings for the United States District Court,[1] the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), and other habeas corpus statutes. Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the legality or duration of his custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). The primary means of attacking the validity of a federal conviction and sentence is through a motion pursuant to 28 U.S.C. § 2255, while a petition for habeas corpus under § 2241 is the proper method to challenge the computation or execution of a federal sentence. *See United States v. Little*, 392 F.3d 671, 678-79 (4th Cir. 2004).

A petitioner may bring a petition for a writ of habeas corpus under § 2241 if he is "attack[ing] the computation and execution of the sentence rather than the sentence itself." *United States v. Miller*, 871 F.2d 488, 490 (4th Cir. 1989) (per curiam); *see also Diaz v. Warden, FCI Edgefield*, No. 4:17-cv-00093-RBH, 2017 U.S. Dist. LEXIS 108410, 2017 WL 2985974, at *2 (D.S.C. July 13, 2017) (noting a § 2241 petition "is the proper means for a federal prisoner to challenge the BOP's sentencing calculations"). A § 2241 petition challenging the execution of a federal prisoner's sentence generally addresses **[*7]** "such matters as the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention[,] and prison conditions." *Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001); *see also Manigault v. Lamanna*, No. 8:06-047-JFA-BHH, 2006 U.S. Dist. LEXIS 30237, 2006 WL 1328780, at *1 (D.S.C. May 11, 2006) ("A motion pursuant to § 2241 generally challenges the execution of a federal prisoner's sentence, such as parole matters, computation of sentence by prison officials, prison disciplinary actions, and prison transfers."). A § 2241 petition must be brought against the warden of the facility where the prisoner is being held, *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004), and "in the district of confinement rather than in the sentencing court," *Miller*, 871 F.2d at 490. *See also* 28 U.S.C. § 2242.

[1] The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. *See* Rule 1(b), Rules Governing § 2254 Cases, 28 U.S.C.A. foll. § 2254.

III. DISCUSSION

Petitioner sets forth three grounds for relief in his § 2241 Petition. First, he argues that the BOP erred in failing to credit him for the fourteen months he spent on Supervised Release in case number 7:07-CR-10-1-D. Second, he argues that the BOP incorrectly found that he could not be awarded additional GCT credit under the First Step Act for his original 108-month term of confinement in case number 7:07-CR-10-1-D. Finally, he argues that 18 U.S.C. 3583(e)(3) is unconstitutional pursuant to *United States v. Haymond*, 139 S. Ct. 2369, 204 L. Ed. 2d 897 (2019). For the reasons that follow, the Court recommends denying all **[*8]** three grounds and dismissing the Petition.

A. Petitioner is not entitled to credit for time spent on Supervised Release (Petitioner's Ground One).

Petitioner argues that the fourteen months he spent on Supervised Release in case number 7:07-CR-10-1-D should be counted as official detention under 18 U.S.C. § 3585(b). The computation of a federal sentence is governed by 18 U.S.C. § 3585 and is comprised of a two-step determination: first, the date on which the federal sentence commences and, second, the extent to which credit may be awarded for time spent in custody prior to commencement of the sentence. 18 U.S.C. § 3585. A federal sentence cannot commence before it is imposed. *See* 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, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served."). Credit for prior custody is governed by § 3585(b), which states:

> 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 sentence was imposed; or
>
> (2) as a result **[*9]** of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another

sentence.
18 U.S.C. § 3585(b).

It is well-established that after a district court imposes a sentence, the Attorney General, through the BOP, is responsible for administering the sentence. *United States v. Wilson*, 503 U.S. 329, 335, 112 S. Ct. 1351, 117 L. Ed. 2d 593 (1992). The authority to determine when a federal sentence commences belongs uniquely to the BOP, subject to federal judicial review under a "deferential abuse-of-discretion standard." *United States v. Hayes*, 535 F.3d 907, 909 (8th Cir. 2008), *cert. denied*, 556 U.S. 1185 (2009).

Here, Petitioner is not entitled to any credit under 18 U.S.C. § 3585(b) for time spent on Supervised Release, as time spent on Supervised Release is not "official detention" as that term is contemplated in the statute. *See Reno v. Koray*, 515 U.S. 50, 58, 115 S. Ct. 2021, 132 L. Ed. 2d 46 (1995) (stating that "credit for time spent in 'official detention' under § 3585(b) is available only to those defendants who were detained in a 'penal or correctional facility,' and who were subject to BOP's control" (internal citation omitted)). Indeed, as the Fourth Circuit has recognized, "[f]or the purpose of calculating credit for time served under 18 U.S.C. § 3585, 'official detention' means imprisonment in a place of confinement, not stipulations or conditions imposed upon a person **[*10]** not subject to full physical incarceration." *United States v. Insley*, 927 F.2d 185, 186 (4th Cir. 1991) (quoting *United States v. Woods*, 888 F.2d 653, 655 (10th Cir. 1989)). Consequently, because Petitioner was not in "official detention" while subject to the conditions of Supervised Release in case number 7:07-CR-10-1-D, none of that time is creditable against his current federal term of confinement. In other words, 18 U.S.C. § 3585(b) is of no help to Petitioner. The Court, therefore, recommends denying Ground One of the Petition.

B. Petitioner is not entitled to additional GCT credit under the First Step Act (Petitioner's Ground Two).

Petitioner seeks additional GCT credit under the First Step Act, arguing that although the BOP applied the First Step Act to his thirty-six-month revocation term in case number 7:07-CR-10-1-D, they did not apply it to the original 108-month term of confinement that preceded the revocation term. *See* ECF No. 1 at 8. He argues that, under the "unitary sentence" framework adopted by the Fourth Circuit in *United States v. Venable*, 943 F.3d 187 (4th Cir. 2019), his 108-month term of confinement and his revocation term are considered the same sentence and, therefore, he is also entitled to the retroactive application of sixty-three days of credit for the 108-month term of confinement he served prior to the amendment of 18 U.S.C. § 3624(b)(1). *See* ECF No. 1 at 8; ECF **[*11]** No. 12 at 2-3.

Respondent argues that the amendments to the GCT earnings were made retroactive, but the changes are applicable only to sentences not yet satisfied as of the effective date of the FSA—July 19, 2019. Therefore, Respondent maintains that "any sentences satisfied prior to the effective date of the FSA are not eligible to receive additional GCT credits." ECF No. 8 at 7. Thus, since Petitioner's "108-month term of confinement in [c]ase [n]umber 7:07-CR-10-1-D was satisfied prior to the effective date of the FSA, he is not eligible to receive any additional GCT credit toward that term." *Id.* The Court agrees with Respondent.

Section 102(b)(1)(A) of the First Step Act amended 18 U.S.C. § 3624(b)(1), altering the method in which GCT credit is calculated and allowing prisoners to receive up to fifty-four days GCT credit per year of the sentence imposed.[2] First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, § 102(b)(1)(A) (2018); *see also Bottinelli v. Salazar*, 929 F.3d 1196, 1197 (9th Cir. 2019) ("[P]aragraph 102(b)(1) [of the First Step Act] amends § 3624(b)—the good time credit provision—to require the BOP to permit up to [fifty-four] days per year."). Section 102(b)(1)(A) applies retroactively "to offenses committed before, on, or after the date of enactment of this Act, except that such amendments shall not apply with respect to offenses committed before November 1, 1987." *Bottinelli*, 929 F.3d at 1200 (quoting **[*12]** § 102(b), 132 Stat. at 5213). The GCT amendments to § 3624(b) took effect on July 19, 2019. *See id.* at 1202.

Petitioner is correct that, in some sense, his revocation sentence is united with his original sentence. *See*

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[2] Prior to the amendment pursuant to the First Step Act, the Supreme Court upheld the BOP's method of awarding GCT credit on the basis of the number of days actually served and not the length of the sentence imposed under the prior version of the statute. *See Barber v. Thomas*, 560 U.S. 474, 478-83, 130 S. Ct. 2499, 177 L. Ed. 2d 1 (2010); *see also Yi v. Federal Bureau of Prisons*, 412 F.3d 526, 529 (4th Cir. 2005). Under the now amended statute, the BOP awards GCT credit on the basis of the actual imprisonment imposed and not on the time actually served, such that prisoners may be entitled to an award of additional days of GCT.

Haymond, 139 S. Ct. at 2379-80 (acknowledging that an accused's final sentence includes any supervised release sentence he may receive, and further noting a "defendant receives a term of supervised release thanks to his initial offense, and whether that release is later revoked or sustained, it constitutes a part of the final sentence for his crime"); *Venable*, 943 F.3d at 194 ("[G]iven that [Defendant's] revocation sentence is part of the penalty for his initial offense, he is still serving his sentence for a 'covered offense' for purposes of the First Step Act. Thus, the district court had the authority to consider his motion for a sentence reduction, just as if he were still serving the original custodial sentence."); *see also Johnson v. United States*, 529 U.S. 694, 701, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000) (noting, with respect to an *ex post facto* challenge, that "postrevocation penalties relate to the original offense").

However, when it comes to the calculation of GCT credit under the First Step Act, district courts that have considered Petitioner's argument—including this Court—have rejected it. *See Beal v. Kallis*, No. 19-cv-3093 (DSD/HB), 2020 U.S. Dist. LEXIS 28896, 2020 WL 822439, at *2 (D. Minn. Jan. 7, 2020) (noting "a revocation sentence **[*13]** is separate and distinct from the original underlying sentence for purposes of calculating [GCT]" and ultimately concluding that "[t]he moment that Beal's prior terms of imprisonment ended was also the moment that Beal became ineligible for additional good-time credit resulting from those terms of imprisonment"), *report and recommendation adopted*, 2020 U.S. Dist. LEXIS 28142, 2020 WL 818913 (D. Minn. Feb. 19, 2020); *Barkley v. Dobbs*, No. 1:19-3162-MGL-SVH, 2019 U.S. Dist. LEXIS 206287, 2019 WL 6330744, at *3 (D.S.C. Nov. 12, 2019) (concluding that petitioner's revocation sentence was separate from his original sentence "for the purpose of calculating good-time credit"), *report and recommendation adopted*, 2019 U.S. Dist. LEXIS 204837, 2019 WL 6318742 (D.S.C. Nov. 25, 2019); *Jamison v. Warden, Elkton Fed. Corr. Inst.*, No. 1:19-cv-789, 2019 U.S. Dist. LEXIS 190981, 2019 WL 5690710, at *3 (S.D. Ohio Nov. 4, 2019) ("Because petitioner's revocation sentence is separate from his original sentence for purposes of calculating good-time credits, he is not entitled to the good-time credits he would have received on his original 36-month sentence if the First Step Act had been enacted at the time he was serving that sentence."), *report and recommendation adopted*, 2019 U.S. Dist. LEXIS 214532, 2019 WL 6828358 (S.D. Ohio Dec. 12, 2019); *Kieffer v. Rios*, No. 19-cv-899 (PJS/SER), 2019 U.S. Dist. LEXIS 143422, 2019 WL 3986260, at *1 (D. Minn. Aug. 23, 2019) (rejecting petitioner's argument that the First Step Act entitled to him to additional GCT credit from his original sentence to be used towards his revocation sentence). Likewise, another district court in the Fourth Circuit has rejected a similar argument based on *Venable* and the "unitary **[*14]** sentence framework" position that Petitioner takes. *See Wilson v. Andrews*, No. 1:20CV470 (RDA/MSN), 2020 U.S. Dist. LEXIS 184302, 2020 WL 5891457, at *4-7 (E.D. Va. Oct. 5, 2020) (analyzing reasons why *Venable* is inapposite and ultimately concluding the petitioner was not entitled to additional GCT credit to reduce his term of supervised release).

This Court agrees with those courts that have already considered the issue. "Supervised release is imposed as part of the original sentence, but the imprisonment that ensues from revocation is partly based on new conduct, is wholly derived from a different source, and has different objectives altogether; it is therefore a different beast." *United States v. McNeil*, 415 F.3d 273, 277 (2d Cir. 2005); *see also* 28 C.F.R. § 2.35(b) ("Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment *is of no further effect* either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release." (emphasis added)). The BOP, therefore, "acted properly in declining to apply the [First Step Act's] new good-time-credit calculation to [Petitioner's] term[ ] of imprisonment that had already concluded before the effective date of the statute." *Beal*, 2020 U.S. Dist. LEXIS 28896, 2020 WL 822439, at *2. Accordingly, **[*15]** the Court recommends denying Ground Two of the Petition.

C. *Haymond* did not invalidate 18 U.S.C. 3583(e)(3) (Petitioner's Ground Three).

Petitioner argues that 18 U.S.C. 3583(e)(3) is unconstitutional pursuant to *Haymond*, but his position as to why is not particularly clear. In any event, *Haymond* "had no impact on [the defendant's] run-of-the-mill revocation sentence imposed under 18 U.S.C. §3583(e)(3)." *United States v. Mooney*, 776 F. App'x 171, 171 n.* (4th Cir. 2019). The Court therefore recommends Ground Three of the Petition be denied. *See United States v. Ka*, 982 F.3d 219, 223 (4th Cir. 2020) ("Our sister circuits that have considered whether *Haymond* has implications for their § 3583(e) jurisprudence agree that it does not.").

IV. RECOMMENDATION

For the reasons set forth above, it is **RECOMMENDED** that Respondent's Motion for Summary Judgment (ECF No. 8) be **GRANTED** and that the petition be **DISMISSED**.

/s/ Molly H. Cherry

Molly H. Cherry

United States Magistrate Judge

July 29, 2021

Charleston, South Carolina