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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YESENIA HERRERA,
Petitioner,

v.

THAHESHA JUSINO,
Respondent.

Case No. [21-cv-02408-JCS](#) (PR)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner seeks habeas relief under 28 U.S.C. § 2241 in the form of custody credits from her state sentence she believes should be applied to her federal sentence. Respondent has filed an answer to the petition. Petitioner has not filed a traverse or any response to the answer.

Respondent correctly contends that the petition should be denied on grounds that petitioner failed to exhaust her administrative remedies and she is not entitled to the prior custody credits because they had been applied to her prior state sentence. Also, petitioner's contention that the denial of credits was retaliatory is unsupported. Accordingly, the petition is DENIED.

The parties have consented to magistrate judge jurisdiction for all purposes under 28 U.S.C. § 636(c). (Dkt. Nos. 8 and 14.)

The Clerk shall modify the docket to reflect that the sole respondent in this action is the Warden of FCI-Dublin, Thahesha Jusino. The Clerk shall terminate United States District Court as a respondent.

United States District Court
Northern District of California

1 **BACKGROUND**

2 The following facts are undisputed unless specifically noted otherwise. Petitioner, a
3 federal prisoner who is housed at FCI-Dublin, is serving a 120-month sentence following
4 her convictions in the United States District Court for Central District of California for
5 conspiracy to distribute methamphetamine (21 U.S.C. §§ 846, 841(b)(1)(A)(viii)), and
6 distribution of methamphetamine (21 U.S.C. § 841(a)(1), (b)(1)(A)(viii)). (Pet., Dkt. No. 1
7 at 1; Ans., Dkt. No. 15 at 2; Dkt. No. 15-1 at 55.)

8 **i. Petitioner’s Sentence and Credits**

9 **a. Petitioner’s State Sentence**

10 On November 21, 2014, petitioner was sentenced in California state court to a 36-
11 month probation term and to 365 days of jail time following her state convictions for the
12 possession for sale of a controlled substance. (Ans., Dkt. No. 15 at 2; Dkt. No. 15-1 at 29.)
13 The state court ordered petitioner to serve 309 days, which is the sum of the 155 days of
14 credit for actual days and the 154 days of good time. (*Id.*, Santa Barbara County Superior
15 Court Sentencing Order, Dkt. No. 15-1 at 48.) She was released from state custody on
16 November 22, 2014, after having served 151 days in custody since her June 25, 2014
17 arrest. (*Id.*, Kelly Decl., Dkt. No. 15-1 at 3; Ventura County Detention Services Booking
18 Sheet, Dkt. No. 15-1 at 18-19.)

19 **b. Petitioner’s Federal Sentence**

20 On January 22, 2016, petitioner was arrested by federal authorities and placed into
21 federal custody for conduct giving rise to the methamphetamine charges detailed above.
22 (Ans., Central District Presentence Report, Dkt. No. 15-1 at 23.) On December 11, 2017,
23 she was sentenced in the United States District Court for the Central District of California
24 to 120 months of imprisonment. (*Id.*, Dkt. No. 15-1 at 55.) The district court ordered that
25 petitioner “shall receive an additional 309 days credit that she’s served on related conduct
26 in state custody.” (*Id.*)

27 **c. Federal Sentence Computation and Credits**

28 How much prior custody crime credit a person receives toward his or her federal

1 sentence is controlled by 18 U.S.C. § 3585(b). Under section 3585(b), the Bureau of
2 Prisons (BOP) must give prior custody credit for any time spent in “official detention” that
3 “occurs after the date of the federal offense, so long as it has not been credited towards
4 another sentence.” (Ans., Dkt. No. 15 at 3.) Section 3585(b) precludes the use of double-
5 credit: A defendant is only entitled to a credit “that has not been credited against another
6 sentence.” If a court orders that credit be awarded that is not authorized under BOP policy,
7 “the BOP shall provide such credit and seek the assistance of appropriate U.S. Attorney’s
8 Office to resolve the BOP’s concerns.” (Ans., Dkt. No. 15 at 3.)

9 Because the amount of the district court’s credit award exceeded the amount
10 allowed by BOP policy, the BOP sent a letter to the prosecuting Assistant United States
11 Attorney asking for assistance. (*Id.*, Letter to AUSA, Dkt. No. 15-1 at 65-66.) The letter
12 stated that petitioner had been in state detention for 151 days, but “applying this credit is
13 contrary to 18 U.S.C. § 3585(b) as it had already been applied to Ms. Herrera’s state
14 sentence.” (*Id.* at 65.) Because of the district court’s order, however, the BOP did initially
15 grant 151 days of credit, which is the maximum it could award under the statute. (Ans.,
16 Dkt. No. 15 at 4.)

17 On appeal the Ninth Circuit Court of Appeals struck the sentencing court’s jail
18 credit order. It concluded that the district court lacked the authority to grant these credits
19 because the authority rests with the BOP. (Ans., Ninth Circuit Memorandum Disposition,
20 Dkt. No. 15-1 at 73-74.) Petitioner’s sentence was then recalculated: the BOP took away
21 the 151 days of credit, but added 700 days of credit for other time spent in official
22 detention. (*Id.*, Dkt. No. 15 at 4.)

23 Petitioner asks for the restoration of credits based on the time she spent in state
24 prison, specifically the 151 days from June 25, 2014 to November 22, 2014. (Pet., Dkt.
25 No. 1 at 8.) She asserts in a conclusory fashion that the BOP denied her the credits in
26 retaliation for her filing a direct appeal. (*Id.* at 6-7.)

27 **ii. Administrative Exhaustion**

28 Respondent contends petitioner has not filed any grievances with the BOP and

1 **i. Failure to Exhaust**

2 Section 2241 does not require that a habeas petitioner exhaust administrative
3 remedies prior to filing suit. But the Ninth Circuit does “require, as a prudential matter,
4 that habeas petitioners exhaust available judicial and administrative remedies before
5 seeking relief under § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)
6 (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)).
7 “Prudential limits, like jurisdictional limits and limits on venue, are ordinarily not
8 optional.” *Id.*

9 “[T]here are a number of exceptions to the general rule requiring exhaustion,
10 covering situations such as where administrative remedies are inadequate or not
11 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury
12 will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d
13 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th
14 Cir. 1981)). “Specifically, exhaustion of administrative remedies may not be required
15 when (1) available remedies provide no genuine opportunity for adequate relief;
16 (2) irreparable injury may occur without immediate judicial relief; (3) administrative
17 appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial
18 constitutional question.” *Id.* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2nd Cir.
19 2003)).

20 Petitioner has not filed any response to respondent’s answer and therefore has not
21 disputed the contention she failed to exhaust her administrative remedies. Furthermore,
22 there is little support in her petition that she exhausted. The case number she provides is
23 the case number of petitioner’s federal criminal case and the date of decision she gives is
24 June 5, 2020, which is the date the Ninth Circuit issued its decision striking the district
25 court’s jail credit order.

26 Because there has been no response to the answer, petitioner also has not shown
27 that the available remedies would not have provided a genuine opportunity for adequate
28 relief, or that irreparable injury might have occurred, or that the process would have been

1 futile, or that she raised a substantial constitutional question. Furthermore, respondent has
2 presented evidence by way of the Vickers declaration that petitioner has not exhausted.
3 Accordingly, the petition is DENIED on grounds of non-exhaustion.

4 **ii. Relief Precluded by Section 3585(b)**

5 Even if petitioner had exhausted her claims, habeas relief is precluded because
6 section 3585 forbids the double-counting of credits: “A defendant shall be given credit
7 toward the service of a term of imprisonment for any time he has spent in official detention
8 prior to the date the sentence commences . . . that has not been credited against another
9 sentence.” Because the state credits were applied to her state sentence, section 3585 bars
10 their double-use toward her federal sentence.

11 Petitioner contends in a conclusory fashion that the BOP denied her the credits in
12 retaliation for her filing a direct appeal. (Pet., Dkt. No. 1 at 6-7.) Petitioner presents no
13 evidence for this. Also, respondent presents the sound contention that “Contrary to
14 Petitioner’s contention that BOP’s removal of the 151 days of credit was retaliatory (*see*
15 ECF 1 at 6-7), BOP simply waited until the judicial process was complete before taking
16 administrative action to remove the 151 days of credit.” (Ans., Dkt. No. 1 at 7.)

17 The petition is DENIED on the additional ground that section 3585 bars habeas
18 relief.

19 **CONCLUSION**

20 The petition for habeas relief is DENIED. The Clerk shall enter judgment in favor
21 of respondent, and close the file.

22 There is no Certificate of Appealability requirement here. *See Harrison v. Ollison*,
23 519 F.3d 952, 958 (9th Cir. 2008) (“The plain language of § 2253(c)(1) does not require a
24 petitioner to obtain a COA in order to appeal the denial of a § 2241 petition . . . Although
25 state prisoners proceeding under § 2241 must obtain a COA, there is no parallel
26 requirement for federal prisoners.”) (internal citations omitted).

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IT IS SO ORDERED.

Dated: June 13, 2022



JOSEPH C. SPERO
Chief Magistrate Judge