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7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF ARIZONA**

9	CARL EMERSON SLOAN,)	CV 07-603-TUC-CKJ
10)	
	Petitioner,)	
11)	
	v.)	RETURN AND ANSWER TO
12)	ORDER TO SHOW CAUSE WHY
)	PETITION FOR WRIT OF HABEAS
13	LOUIS WYNN,)	CORPUS SHOULD NOT BE GRANTED
)	
14	Respondent.)	
15	_____)	

16 Respondent Louis Winn (misspelled Wynn in petition), Warden, Federal Correctional
 17 Institution, Tucson, by and through his attorneys, Diane J. Humetewa, United States Attorney for
 18 the District of Arizona, and Elizabeth Wilson, Assistant United States Attorney, returns and
 19 answers the order to show cause why Petitioner Carl Emerson Sloan’s petition for writ of habeas
 20 corpus should not be granted and requests that the Court deny and dismiss the petition based
 21 upon the accompanying memorandum of points and authorities.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION**

24 Petitioner Carl Emerson Sloan (“Sloan”), federal register number 57014-097, is an
 25 inmate
 26 currently incarcerated at the Federal Correctional Institution (FCI), Tucson, Arizona. (Exhibit 1,

1 Inmate History.) He is serving a one year and one day sentence for a Supervised Release
2 Revocation Judgment. (Exhibit 2, Supervised Release Revocation Judgment.) On November 15,
3 2007, petitioner filed an Petition Under 28 U.S.C. § 2241 For a Writ of Habeas Corpus by a
4 Person in Federal Custody (“Petition”) with attached Emergency Petition for Writ of Habeas
5 Corpus Pursuant to 28 U.S.C. §2241 (“Emergency Petition”) commencing this case.

6 The Petition should be denied because Sloan failed to exhaust his administrative
7 remedies with respect to his claims. On the merits the Petition should be denied because Sloan’s
8 sentence has been properly computed and he is not entitled to the relief he seeks.

9 II. FACTS

10 On April 11, 1996, Sloan was sentenced by the Central District of California to a term of
11 84 months imprisonment followed by three years of supervised release after his conviction for
12 violations of 18 U.S.C. § 2113(a), Bank Robbery. He was released from custody on March 7,
13 2002, via good conduct time release, and was placed on supervised release. Exhibit 1, Inmate
14 History. On June 25, 2002, a Petition on Probation and Supervised Release (Bench Warrant)
15 was filed (“Supervised Release Revocation”) (Exhibit 3, Central District of California Docket
16 United States v. Carl Emerson Sloan, 95-cr-00857.) The Petition to Revoke was subsequently
17 amended on June 4, 2003. *Id.*

18 On June 29, 2002, Sloan was arrested by the Smithville, Tennessee Police Department
19 for Aggravated Assault and Robbery. (Exhibit 4, Michael Hillebrand Letter, pg 1.) He was
20 detained under the authority of the Dekalb County Correctional Facility until he was sentenced
21 by the State of Tennessee, on April 9, 2003, to a term of six years. (Emergency Petition, ¶2);(
22 *See also* Exhibit 4, pg 1.) This sentence was ordered to run consecutive to any term imposed on
23 the Federal Supervised Release Revocation sentence. *Id.*

24 On April 9, 2003, Sloan was turned over to the United States Marshals Service (USMS)
25 for the Supervised Release Revocation charge. (Exhibit 1, pg 1.) On July 28, 2003, Sloan was
26 found to be in violation of the terms of release and was sentenced to a one year and one day term

1 of imprisonment, to run consecutively to his State of Tennessee sentence. (Exhibit 2.) This
2 sentence was imposed by the Honorable Edward Rafeedie, United States District Judge for the
3 Central District of California. *Id.*

4 On December 2, 2003, Sloan was mistakenly delivered to the United States Penitentiary
5 (USP) Lompoc, instead of being returned to the State of Tennessee authorities for service of his
6 state sentence. (Exhibit 4, pg 2.) Officials at USP Lompoc immediately detected this error and
7 made arrangements for the USMS to deliver Sloan to the State of Tennessee Department of
8 Corrections to serve his state sentence. *Id.* Sloan departed USP, Lompoc on December 5, 2003
9 and was subsequently delivered to the State of Tennessee to serve his sentence. (Exhibit 1, pg

10 1.) Sloan was paroled from his State of Tennessee sentence on May 15, 2007. (Exhibit 5,
11 Designation and Sentence Computation Memorandum, dated August 17, 2007.) In calculating
12 Sloan's release date from the State of Tennessee facility, Sloan was given credit for the 284 days
13 he was incarcerated during the period prior to his State trial, as well as 72 days additional days
14 granted for pretrial good behavior. (Exhibit 6, State of Tennessee Sentence Calculation
15 Worksheet.) In addition, Sloan was given credit for all post-judgment time spent in federal
16 custody and 328 days good behavior credit for time served in State custody. *Id.*

17 On May 15, 2007, Sloan was released to the USMS to begin serving his federal sentence.
18 (Exhibit 1.) Sloan's federal sentence computation began on May 15, 2007. (Exhibit 7, Federal
19 Sentence Computation Worksheet.) The Designation and Sentence Computation Center of the
20 Bureau of Prisons confirmed with the Tennessee Department of Corrections that there was no
21 time which needed to be credited to Sloan's federal sentence prior to May 15, 2007. (Exhibit 5.)
22 Based on the foregoing, Sloan is projected to complete his federal sentence on March 29, 2008.
23 (Exhibit 7.)

24 **III. ARGUMENT**

25 **A. THE PETITION SHOULD BE DISMISSED BECAUSE SLOAN HAS FAILED 26 TO EXHAUST ADMINISTRATIVE REMEDIES.**

A federal prisoner challenging any circumstance of his imprisonment must exhaust all

1 available administrative remedies prior to bringing a petition for writ of habeas corpus. *See*
2 *McKart v. United States*, 395 U.S. 185 (1969); *Parisi v. Davidson*, 405 U.S. 34, 37 (1972);
3 *Terrell v. Brewer*, 935 F.2d 1015 (9th Cir. 1991); *Martinez v. Roberts*, 804 F.2d 570, 571 (9th
4 Cir. 1986); *Brice v. Day*, 604 F.2d 664 (10th Cir. 1979), *cert. denied*, 444 U.S. 1086 (1980);
5 *Angle v. Laird*, 429 F.2d 892 (10th Cir. 1970), *cert. denied*, 401 U.S. 918 (1971). A request for
6 prior custody credit is no exception. “[I]t is well-established that a request for credit for prior
7 custody under 18 U.S.C. § 3585(b)(2) must be made, in the first instance, to the Attorney
8 General through the Bureau of Prisons upon imprisonment after sentencing. *See United States v.*
9 *Wilson*, 503 U.S. 329, 334, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992). Once administrative
10 remedies are exhausted, *see* 28 C.F.R. §§ 542.10-542.16, prisoners may then seek judicial review
11 of any jail-time credit determination, *see Wilson*, 503 U.S. at 335, 112 S.Ct. 1351, by filing a
12 habeas petition under 28 U.S.C. § 2241.” *Rogers v. U.S.*, 180 F.3d 349, 358 (1st Cir.
13 1999)(footnote and internal quotations omitted) . Dismissal is warranted when a petitioner fails
14 to exhaust his administrative remedies. *Martinez v. Roberts*, 804 F.2d at 571. As stated by the
15 Ninth Circuit in *McKinney v. Carey*, 311 F.3d 1198, 1200 - 1201 (9th Cir. 2002), “Requiring
16 dismissal without prejudice when there is no presuit exhaustion provides a strong incentive that
17 will further Congressional objectives, permitting exhaustion *pendente lite* will inevitably
18 undermine attainment of them.”

19 Sloan argues that he “attempted Administrative Remedies at the local level to no avail.”
20 Petition, pg 4. However, according to the Bureau of Prison’s records, Sloan has not filed any
21 administrative remedies on any level regarding his sentence computation. (Exhibit 8, Declaration
22 of Matthew Carney with attachments.) Sloan’s only administrative remedy filing involved a
23 medical issue. (Exhibit 8.) Consequently, the Bureau of Prisons has not been given an
24 opportunity, pursuant to the provisions of 28 C.F.R. §542, to address this issue. Accordingly,
25 Sloan has not exhausted his available administrative remedies as required prior to filing and
26 therefore, the Petition should be dismissed without prejudice.

1
2 B. SLOAN HAS BEEN GIVEN ALL CUSTODY CREDITS TO WHICH HE IS
3 ENTITLED.

4 Sloan contends that none of the time he spent in federal custody pursuant to the federal
5 writ of habeas corpus ad prosequendum was credited towards either the State of Tennessee
6 sentence or the federal sentence. (Petition, pg 4.) Therefore, Sloan contends that because he was
7 in federal custody from April 9, 2003 to February 10, 2004 and again from May 15, 2007 to
8 present, he has served his entire federal sentence and is being held illegally for a sentence
9 already served. (Petition, pg. 4.) Sloan is essentially seeking credit toward his federal sentence
10 for the time he was in federal custody pursuant to a writ of habeas corpus ad prosequendum.
11 Sloan's contention is wrong for two reasons.

12 First, a federal sentence does not begin to run when the defendant is produced for
13 prosecution by a federal writ of habeas corpus ad prosequendum from state custody. *Thomas v.*
14 *Brewer*, 923 F.2d 1361 (9th Cir. 1991). A federal sentence commences when a defendant is
15 "received at an institution either to serve his sentence, or to be transported to another institution
16 where his sentence was to be served. *Id.* at 1368. Although Sloan may have been in the physical
17 custody of the United States Marshal pending sentencing on the Supervised Release Revocation
18 charge, Sloan was not in custody to serve his sentence or to be transported to an institution to
19 serve his sentence.

20 Moreover, the State of Tennessee had not relinquished its jurisdiction by temporarily
21 surrendering physical custody to the federal government and thus, Sloan was still in the primary
22 custody of the State of Tennessee. *Id.* at 1366-1367. As set forth above, Sloan was arrested by
23 the State of Tennessee on June 29, 2002, for Aggravated Assault and Robbery. (Exhibit 6.)
24 After he was sentenced by the State of Tennessee, on April 9, 2003, Sloan was brought into
25 federal custody via a writ of ad prosequendum (borrowed) and sentenced on July 29, 2003.
26 (Exhibit 4.) When two different sovereigns have custody of a criminal defendant over a period
of time, the sovereign who first acquires custody of the defendant has primary jurisdiction over

1 the defendant and primary jurisdiction remains vested in the sovereign until the sovereign
2 relinquishes its priority to the other sovereign by, e.g., bail release, dismissal of the state charges,
3 parole release, or expiration of the sentence. *United States v. Warren*, 610 F.2d 680, 684-645
4 (9th Cir. 1980). As the State of Tennessee had primary jurisdiction that had not been
5 relinquished, when Sloan was transferred pursuant to a writ of habeas corpus ad prosequendum,
6 he was considered to be “on loan” to the federal authorities. *See Thomas v. Brewer* 923 F.2d at
7 1367. The State of Tennessee’s primary jurisdiction continued uninterrupted from the date of
8 Sloan’s arrest, June 29, 2002, until May 15, 2007, the date Sloan completed his State of
9 Tennessee sentence and the State of Tennessee relinquished jurisdiction. *See Del Guzzi v.*
10 *United States*, 980 F.2d 1269 (9th Cir. 1992)(Federal custody does not commence until the state
11 authorities relinquish the prisoner on satisfaction of the state obligation.)

12 Second, all time Sloan spent in federal custody was credited to his State of Tennessee
13 sentence. (Exhibit 6.) The State of Tennessee gave Sloan credit for all periods of incarceration
14 from June 29, 2002, in addition to good conduct credit for those periods served in state custody¹.

15 Id. Pursuant to 18 U.S.C. § 3585:

16 A defendant shall be given credit toward the service of a term of imprisonment for any
17 time he has spent in official detention prior to the date the sentence commences--
18 (1) as a result of the offense for which the sentence is imposed; or
19 (2) as a result of any other charge for which the defendant was arrested after the
20 commission of the offense for which the sentence was imposed; that has not been
21 credited against another sentence.

18 U.S.C. § 3585(b).

20 The plain language of the statute provides that, when time in federal custody has been credited
21 against another sentence, the inmate is not entitled to credit for that time on his federal sentence.

23 ¹ To support his contention that he received no credit for the time he served in federal
24 custody, Sloan alleges that he was entitled to twelve (12) days per month “Good Time” credit,
25 for the six (6) year term of his sentence. Tenn.Code Ann § 41-21-236 provides that an inmate is
26 entitled to only eight days credit per month for good institutional behavior and that the credits
are earned on a monthly basis. Therefore, inmates are only entitled to credit for the time served,
not the length of the original sentence.

