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OCT 18 2007

 CLERK U S DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ DEPUTY

Brian William Aderhold 12765081
Name and Prisoner Number/Alien Registration Number

Federal Correctional Institution- Safford
Place of Confinement

P.O. Box 9000
Mailing Address

Safford, Arizona state 85548
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brian William Aderhold)
(Full Name of Petitioner))

Petitioner,)

vs.)

United States of America)
(Name of Warden, Jailor or authorized person)
having custody of Petitioner))

Respondent.)

CASE NO. CV 07-531-TUC-JMR
(To be supplied by the Clerk)

PETITION UNDER 28 U.S.C. § 2241
FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN FEDERAL CUSTODY

PETITION

1. What are you challenging in this petition?

- Immigration detention
- Bureau of Prisons sentence calculation or loss of good-time credits
- Probation, parole or supervised release
- Other (explain): _____

2. (a) Name and location of the agency or court that made the decision you are challenging: _____

United States District Court For The District of Utah - Central Division

(b) Case or opinion number: 2:05-CR-00544-001PGC

(c) Decision made by the agency or court: Court imposed a sentence of 46 months incarceration to be followed by 60 months of supervised release

(d) Date of the decision: January 30th, 2006

3. Did you appeal the decision to a higher agency or court? Yes No

If yes, answer the following:

(a) First appeal:

(1) Name of the agency or court: N/A

(2) Date you filed: N/A

(3) Opinion or case number: N/A

(4) Result: N/A

(5) Date of result: N/A

(6) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Second appeal:

(1) Name of the agency or court: N/A

(2) Date you filed: N/A

(3) Opinion or case number: N/A

(4) Result: N/A

(5) Date of result: N/A

(6) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(c) Third appeal:

(1) Name of the agency or court: N/A

(2) Date you filed: N/A

(3) Opinion or case number: N/A

(4) Result: N/A

(5) Date of result: N/A

(6) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

4. If you did not appeal the decision to a higher agency or court, explain why you did not: I did not appeal the decision to a higher court because I understood that I waived that right in my plea agreement. Therefore, I could not appeal the decision.

5. Other than the appeals listed above, have you filed any other petitions, applications or motions concerning the issues raised in this petition? Yes No

If yes, answer the following:

(a) Name of the agency or court: N/A

(b) Date you filed: N/A

(c) Opinion or case number: N/A

(d) Result: N/A

(e) Date of result: N/A

(f) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

6. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available administrative remedies on each ground on which you request action by the federal court.

GROUND ONE: The United States District Court and the government were aware of Federal Statute 18 U.S.C. § 3585(b) which states that a person is to receive credit for time spent in custody and detained prior to the date the sentence commences

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
The District Court for the District of Utah and the government failed to acknowledge the time I spent in constructive custody of the government on pretrial conditions prior to the commencement of my sentence on February 24th, 2006. The government failed to give me credit for this time, and the court, knowing the statute, failed to order the government to give me credit for the time I spent in constructive custody and was detained by the government by the direct custody of the United States Probation Office in Salt Lake City, Utah. See Attached Memorandum of Law in support of this Petition.

(b) Did you exhaust all available administrative remedies relating to Ground One? Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
- The Office of General Counsel
- The Parole Commission
- Other: _____

(d) If you did not exhaust all available administrative remedies relating to Ground One, explain why:
The relief being sought is in relation to a violation of my Constitutional Rights and therefore there was no Administrative Remedy relating to Ground One to exhaust as the Bureau of Prisons does not have the legal power invested in it to remedy this claim. Only a United States District Court can remedy this violation.

GROUND TWO: The Ninth Circuit ruled in 2006 that every person shall be given credit for the time spent in custody as a result of the offense for which the sentence was imposed.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
The Ninth Circuit has already followed the Supreme Court's Decision that section 3583 substitutes "official detention" for "custody" and that it therefore enlarges the class of persons who receive pre-sentence credit for time that they were in custody. see attached memorandum of law

(b) Did you exhaust all available administrative remedies relating to Ground Two? Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
- The Office of General Counsel
- The Parole Commission
- Other: _____

(d) If you did not exhaust all available administrative remedies relating to Ground Two, explain why:
The relief being sought is in relation to a violation of my Constitutional Rights and therefore the Bureau of Prisons does not have authority to remedy this. Only the United States District Court can correct this error. Therefore there was no Administrative Remedy to seek in relation to Ground Two.

GROUND THREE: The government and District Court of Utah, by failing to give me credit for the time I was in custody and detained by the government that they have placed me in Double Jeopardy and have therefore violated my Fifth Amendment Right to be protected from Double Jeopardy

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
By failing to award me credit for the time that I was on pretrial custody for the government, I am being required to serve 220 days of my sentence for the same criminal offense twice which constitutes DOUBLE JEOPARDY. The United States District Court for the District of Utah and the government failed to give me credit for my pretrial custody and detention and have therefore violated my Fifth Amendment Right. See Attached Memorandum of Law in support of this Petition.

(b) Did you exhaust all available administrative remedies relating to Ground Three? Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
- The Office of General Counsel
- The Parole Commission
- Other: _____

(d) If you did not exhaust all available administrative remedies relating to Ground Three, explain why:
Ground Three is a direct violation of a Constitutional Right and can not be remedied by the Bureau of Prisons. Therefore there was no administrative remedy to exhaust. This issue or ground can only be remedied in a United States District Court.

~~GROUND FOUR: Black's Law Dictionary Defines detention as the act of holding a person in custody. Custody is defined as the care and control of a thing or person for inspection, preservation, or security. There is no definition found for "official detention."~~

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):
~~The Ninth Circuit Court of Appeals Concluded in 2006 that if a person is Detained in a pretrial setting, while enjoying the presumption of innocence that it is only fair that the government give him credit for that time he is in custody. Detention is defined as being in custody and custody is being under the control for inspection, preservation, and security. These definitions define my pretrial conditions. I was in the direct custody of the United States Probation Office under Pre-trial services in Salt Lake City, Utah, which resulted from a court order sought by the government. Therefore I was in the custody of the government during this time. The Ninth Circuit has already determined that I'm eligible for a credit of this time spent in custody and detained. The failure of this honorable court to order this time credited towards the service of my sentence would violate my constitutional right to be protected from Double Jeopardy as granted by the Fifth Amendment to the Constitution. See Attached Memorandum of Law in Support of this Petition for Writ of Habeas Corpus.~~

(b) Did you exhaust all available administrative remedies relating to Ground Four? Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
- The Office of General Counsel
- The Parole Commission
- Other: _____

(d) If you did not exhaust all available administrative remedies relating to Ground Four, explain why:
Ground Four is not an issue that can be corrected or remedied

~~by the Bureau of Prisons. Therefore there were no administrative remedies related to this ground to be sought. The United States District Court is the only legal entity that can hear and address this issue to make a correction, as it is a violation of a Constitutional Right.~~

Please answer these additional questions about this petition:

7. Are you challenging your conviction or sentence in any of the grounds raised above? Yes No
(Claims challenging a federal conviction or sentence may only be raised in a motion under 28 U.S.C. § 2255, unless the § 2255 motion is legally inadequate or ineffective.)

If yes, answer the following:

(a) Have you filed a motion under 28 U.S.C. § 2255? Yes No

If yes, answer the following:

(1) Name of court: N/A

(2) Case number: N/A

(3) Opinion or case number: N/A

(4) Result: N/A

(5) Date of result: N/A

(6) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Explain why the remedy under § 2255 is inadequate or ineffective: A § 2255 is ineffective because I am seeking a remedy for a violation of my Fifth Amendment Rights to be protected from Double Jeopardy. This remedy is properly sought in a § 2241 Petition as it is a Constitutional violation that occurred during my criminal proceedings.

8. If this case concerns immigration removal proceedings, answer the following:

(a) Date you were taken into immigration custody: N/A

(b) Date of removal or reinstatement order: N/A

(c) Did you file an appeal with the Board of Immigration Appeals? Yes No

(1) Date you filed: N/A

(2) Case number: N/A

(3) Result: N/A

(4) Date of result: N/A

(5) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(d) Did you file an appeal with the federal court of appeals? Yes No

(1) Name of the court: N/A

(2) Date you filed: N/A

(3) Case number: N/A

(4) Result: N/A

(5) Date of result: N/A

(6) Issues raised: N/A

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

9. Petitioner asks that the Court grant the following relief: That this court correct the Double Jeopardy that has occurred against me by ordering the Bureau of Prisons to credit me for the 220 days that I spent in the custody and Detention of the government during my pretrial proceedings and that this petition be handled in a Summary Way. See Attached Memorandum or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 10/15/07 (month, day, year).

Brian W Adelsold
Signature of Petitioner

N/A
Signature of attorney, if any

N/A
Date