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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jermaine L Gadson,

10 Petitioner,

11 v.

12 R. Rhodes,

13 Respondent.  
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No. CV-18-00197-TUC-JGZ

**ORDER**

15 Pending before the Court is a Report and Recommendation issued by United States  
16 Magistrate Judge Bruce G. Macdonald. (Doc 23.) Magistrate Judge Macdonald  
17 recommends dismissing Petitioner’s § 2241 Petition for Writ of Habeas Corpus because  
18 Petitioner failed to establish his claim. (*Id.* at 9.)

19 A review of the record reflects that the parties have not filed any objections to the  
20 Report and Recommendation and the time to file objections has expired. As such, the  
21 Court will not consider any objections or new evidence. Upon review of the record, the  
22 Court will adopt Magistrate Judge Macdonald’s recommendation that the Petition be  
23 dismissed.

24 The district court stated at Petitioner’s sentencing, “I’ll give you credit for the  
25 serving of this sentence for the time you’ve been held in custody, in federal custody,” but,  
26 under applicable statutes and regulations, Petitioner had not been “in federal custody” until  
27 he was transferred to the Bureau of Prisons to begin serving his sentence on June 14, 2016.  
28 And although Petitioner did not receive federal credit for the time served between July 2,

1 2014 and February 3, 2016, he did receive credit for that time in satisfaction of his state  
2 sentence.

3 To the extent the sentencing court believed that Petitioner was in federal custody  
4 for sentencing purposes, it may have been mistaken. Even so, the record does not support  
5 the inference that the sentencing court intended for Petitioner to receive both federal and  
6 state credit for the time he was in state custody, but being held in federal facilities. The  
7 court could have ordered that Petitioner's 120-month term of imprisonment run concurrent  
8 or partially concurrent to Warren County, Missouri, Circuit Court, Case No. 06BB-  
9 CR01033, but it did not. The court ordered that the sentence run consecutively. Between  
10 the state and the federal sentences, Petitioner has been credited with all the time he has  
11 served.<sup>1</sup>

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27 <sup>1</sup> The Court notes that a certificate of appealability is not required in order for a  
28 federal prisoner to appeal the denial of a § 2241 petition. *See Harrison v. Ollison*, 519 F.3d  
952, 958 (9th Cir. 2008).

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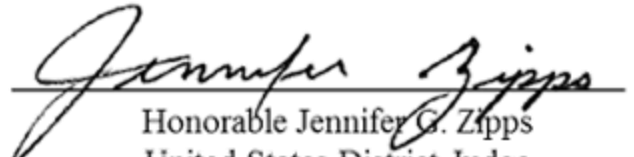
Accordingly,

**IT IS ORDERED** that the Report and Recommendation (Doc. 23) is **ADOPTED**.

**IT IS FURTHER ORDERED** that Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED**.

The Clerk of Court shall enter judgment accordingly and close the file in this action.

Dated this 29th day of March, 2021.

  
Honorable Jennifer G. Zipp  
United States District Judge