

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

LAIF DOUGLAS POULTON

PETITIONER

v. Civ. No. 4:09-cv-4069

UNITED STATES OF AMERICA

RESPONDENT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, LAIF DOUGLAS POULTON, filed this petition for writ of *a habeas corpus* (Motion for Credit for Time Spent in Custody) pursuant to 28 U.S.C. § 2241 (1996). The Petition seeks credit against a Federal prison sentence for time Petitioner allegedly spent subject to Federal detention. The Respondent has responded to the Petition. The petition was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

A. Procedural Background¹:

This Court previously set out the procedural background of this case, including the underlying criminal proceedings that led to the prison sentence complained of in this case, in its Report and Recommendation of February 26, 2009, and will not repeat that history here. *See United States v. Poulton*, No. 4:03-cr-40008 (Doc. No. 53).

B. Current Petition:

On July 6, 2009, the Petitioner filed the instant Petition alleging he was entitled to relief pursuant to 28 U.S.C. § 2241. Specifically, he seeks credit for time served in the custody of the

¹The procedural background is taken from the Petition, Response to Petition, and the Court's Docket in both the instant case and in the criminal matter referenced above.

State of Arkansas, against his current Federal sentence. The Respondent has moved for dismissal of the instant petition alleging (1) Petitioner is not in Federal custody, (2) the Court lacks jurisdiction over this claim, and (3) Petitioner has not exhausted all available administrative remedies.

On November 9, 2009, Petitioner filed a request to dismiss this case. (Doc. No. 10). Specifically Petitioner requests: "I would like to withdraw my motion for credit for time spent in custody. Poulton v. USA n:4:09 cv 4069. I am not sure how to do this, but I would like to withdraw that motion." The Court finds that Petitioner's request to withdraw his motion for credit for time spent in custody (the original Petition in this matter) should be granted. Further, because the Court will grant Petitioner's requested withdrawal of his request for credit for time served, the basis of the Petition in the instant case, the Court will not address the issues raised in the response.

C. Recommendation:

Accordingly, based on the foregoing, it is recommended the Petitioner's Motion to Dismiss (Request to Withdraw Motion) (Doc. No. 10) be **GRANTED** and that the Petition for Writ of *Habeas Corpus* in this case be **DISMISSED**.

The parties have ten (10) days from receipt of this Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court. See *Thompson v. Nix*, 897 F.2d 356, 357 (8th Cir. 1990).

DATED this 24th day of November, 2009.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE