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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JACOBY DESHON HILDREDTH,)	Case No. 5:20-cv-01667-DOC-JDE
)	
Petitioner,)	ORDER TO SHOW CAUSE
)	WHY THE PETITION SHOULD
v.)	NOT BE DISMISSED
W. S. PLILER, Warden,)	
)	
Respondent.)	

I.

INTRODUCTION

On August 18, 2020, Petitioner Jacoby Deshon Hildredth (“Petitioner”), a federal prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, contending that he is entitled to presentence custody credits for time spent in custody. Dkt. 1 (“Petition” or “Pet.”). Petitioner asserts “[t]his is [his] first attempt at gaining validation for the time credit” Pet. at 4.

A habeas petition brought under 28 U.S.C. § 2241 is subject to the same screening requirements that apply to habeas petitions brought under 28 U.S.C. § 2254. See Rules Governing Section 2254 Cases in the United States District

1 Courts (“Habeas Rules”), Habeas Rule 1(b) (providing that district courts may
2 apply the Habeas Rules to habeas petitions that are not brought under 28
3 U.S.C. § 2254). Accordingly, a district court “must promptly examine” the
4 petition and, “[i]f it plainly appears from the petition . . . that the petitioner is
5 not entitled to relief,” the “judge must dismiss the petition.” Habeas Rule 4;
6 Mayle v. Felix, 545 U.S. 644, 656 (2005).

7 Pursuant to Rule 4 of the Habeas Rules, the Court has conducted a
8 preliminary review of the Petition and finds it appears subject to dismissal for
9 failure to exhaust administrative remedies.

10 II.

11 PETITIONER’S CLAIMS

12 1. Petitioner did not know at the time of his criminal proceedings that
13 the “time being served would be in question towards [his] sentence.” Pet. at 7.

14 2. Based on his acknowledgment of guilt, “every day in custody with
15 the U.S. Marshal should have been applied to [Petitioner’s] sentence.” Pet. at 8.

16 3. Petitioner’s “reasons for being incarcerated at the time of the
17 Federal Indictment stem from the same criminal episode charged by the state
18 agency and based on the involvement between the two entities it is only fair
19 that [his] time credit reflect the chain of custody.” Pet. at 8.

20 Petitioner requests that the sixteen months in the custody of the U.S.
21 Marshal between September 2015 through January 2017 be credited to
22 completion of his federal sentence. Pet. at 9.

23 III.

24 DISCUSSION

25 “As a prudential matter, courts require that habeas petitioners exhaust
26 all available judicial and administrative remedies before seeking relief under
27 [28 U.S.C.] § 2241.” Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012).
28 Requiring administrative exhaustion “aid[s] judicial review by allowing the

1 appropriate development of a factual record in an expert forum; conserve[s] the
2 court's time because of the possibility that the relief applied for may be granted
3 at the administrative level; and allow[s] the administrative agency an
4 opportunity to correct errors in the course of administrative proceedings.”
5 Ruivwat v. Smith, 701 F.2d 844, 845 (9th Cir. 1983) (per curiam).

6 Since the exhaustion requirement is not a “jurisdictional prerequisite,”
7 courts have discretion to waive the requirement in Section 2241 cases. Ward,
8 678 F.3d at 1045 (citation omitted); Laing v. Ashcroft, 370 F.3d 994, 998 (9th
9 Cir. 2004). Courts may waive the exhaustion requirement where
10 administrative remedies are inadequate or not efficacious, pursuit would be
11 futile, irreparable injury will result, or the administrative proceedings would be
12 void. See Ward, 678 F.3d at 1045; Laing, 370 F.3d at 1000.

13 Here, it appears from the face of the Petition that Petitioner has failed to
14 exhaust administrative remedies because he has not pursued relief through the
15 Federal Bureau of Prisons (“BOP”) administrative remedy program. In
16 response to the question on the form habeas petition asking whether he
17 appealed the decision, filed a grievance, or sought an administrative remedy,
18 Petitioner responded, “No,” explaining that his “understanding was not clear
19 as to how to proceed with the inquisition towards the court while already in the
20 BOP custody.” Pet. at 3-4. He concedes “[t]his is [his] first attempt at gaining
21 validation for the time credit” (*id.* at 4), and he does not provide any
22 explanation as to why the exhaustion requirement should be waived in this
23 case.

24 IV.

25 ORDER


26 Petitioner is therefore ORDERED TO SHOW CAUSE in writing within
27 thirty (30) days of this Order explaining why this action should not be
28 dismissed without prejudice for failure to exhaust administrative remedies. If

1 Petitioner contends that he has, in fact, exhausted some or all of his claims, he
2 must clearly explain the basis for this contention, and provide any available
3 competent evidence that establishes exhaustion. If Petitioner claims exhaustion
4 of his administrative remedies should be waived, he shall set forth in detail the
5 facts supporting this contention.

6 If, after review of this Order, Petitioner should decide not to further
7 pursue this action at this time, Petitioner may voluntarily dismiss the action by
8 filing a Notice of Dismissal in accordance with Federal Rule of Civil
9 Procedure 41(a)(1). The Clerk is directed to send Petitioner a Central District
10 Request for Dismissal form.

11 **The Court warns Petitioner that failure to timely file a response to**
12 **this Order may result in the dismissal of this action for failure to exhaust,**
13 **lack of prosecution, and/or failure to comply with a Court order. See Fed.**
14 **R. Civ. P. 41(b).**

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16 Dated: September 09, 2020

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19 JOHN D. EARLY
20 United States Magistrate Judge
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