

United States District Court

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

ROYRICK MILLER,

Defendant.

No. C 06-01572 CRB
CR-04-0147 CRB

**ORDER DISMISSING SECTION 2255
PETITION**

Now pending before the Court is defendant Royrick Miller's pro se petition pursuant to 28 U.S.C. section 2255. Miller contends that the Federal Bureau of Prisons did not give him credit for all the time he spent in federal custody prior to his sentencing. A claim for credit against a federal sentence for time spent in custody prior to sentencing cannot be raised under 28 U.S.C. section 2255. United States v. Espinoza, 866 F.2d 1067, 1071 (9th Cir. 1988). "Such a claim challenges the Attorney General's execution of sentence rather than the district court's imposition; a § 2255 petition can test only the propriety of the sentence imposed, not the manner of execution." Id. Accordingly, Miller's section 2255 petition is DISMISSED.

IT IS SO ORDERED.

Dated: March 2, 2006


CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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