

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JULIO ORTEGO,

Petitioner,

vs.

Case No. 2:06-cv-256-FtM-SPC

PEOPLE OF THE STATE,

Respondent.

OPINION AND ORDER

_____This matter comes before the Court on consideration of petitioner's Petition for Writ of Habeas Corpus Under Section 2241 by a Person in Federal Custody (Doc. #1), filed on May 22, 2006.

Petitioner is currently incarcerated in Ashland, Kentucky. Petitioner was sentenced to 121 months by Judge Martinez in the Southern District of Florida on April 16, 2004. Petitioner contends that he was denied credit for time served for time spent while detained before sentencing. Petitioner seeks relief pursuant to 18 U.S.C. § 3585(b).

This Court has no authority to give defendant credit for time served. United States v. Wilson, 503 U.S. 329, 336 (1992); United States v. Lucas, 898 F.2d 1554, 1556 (11th Cir. 1990). Only the Bureau of Prisons, as the designated agent of the Attorney General, has the authority to determine initially the amount of credit a federal prisoner should receive. Wilson, 503 U.S. at 335-36; Lucas, 898 F.2d at 1556. A federal inmate who disagrees with the

calculation of the Bureau of Prisons must exhaust all administrative remedies and then may file a petition in federal court pursuant to 28 U.S.C. § 2241 naming the warden as defendant. E.g., Rodriguez v. Lamer, 60 F.3d 745, 747 (11th Cir. 1995). Accordingly, the motion is due to be denied without prejudice to filing an appropriate petition pursuant to 28 U.S.C. § 2241 in the district of incarceration if defendant has exhausted his administrative remedies.

Accordingly, it is now

ORDERED:

Petitioner's Petition for Writ of Habeas Corpus Under Section 2241 by a Person in Federal Custody (Doc. #1) is **DENIED** without prejudice to filing an appropriate petition pursuant to 28 U.S.C. § 2241 in the district of incarceration if defendant has exhausted his administrative remedies. The Clerk shall enter judgment accordingly, terminate all pending motions and close the case.

DONE AND ORDERED at Fort Myers, Florida, this 25th day of May, 2006.



JOHN E. STEELE
United States District Judge

Copies:
Petitioner