



to credit from the date his federal sentence was imposed to the date he was transferred to state custody.

Petitioner's federal sentence was imposed on July 29, 2004, and he was transferred to state custody on August 23, 2004. The magistrate judge concluded petitioner was not entitled to credit towards his federal sentence for this period time because during that period of time he was in federal custody pursuant to a writ of habeas corpus *ad prosequendum*. In addition, documents submitted by the respondent established that he received credit towards his state sentence for all periods of time after his federal sentence was imposed.

Documents filed by the respondent show that on July 23, 2003, the State of Texas moved to revoke petitioner's placement on deferred adjudication and issued an *alias capias* warrant providing for his arrest. At that time, Texas had primary jurisdiction over him. Petitioner's objections contesting this are without merit. The state warrant was executed on July 31, and petitioner was taken to the Fort Bend County Jail.

On January 13, 2004, petitioner was transferred to federal custody pursuant to a writ of habeas corpus *ad prosequendum*. He remained in federal custody pursuant to this writ through his federal sentence date and until he was returned to state custody on August 23, 2004. Petitioner received credit towards his state sentence for time spent in federal custody pursuant to the writ. The magistrate judge correctly stated that so long as an inmate receives credit towards a state sentence for time spent in federal custody pursuant to a writ of habeas corpus *ad prosequendum*, he is not entitled to also receive credit towards his federal sentence. *Lopez v. Jeter*, 170 F. App'x 894, 895 (5th Cir. 2006) (citing *United States v. Brown*, 753 F.2d 455, 456 (5th Cir. 1985)). Petitioner's objections to the contrary are without merit.

### **ORDER**

Accordingly, the objections filed by petitioner (#51) to the Report and Recommendation are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are

correct, and the Report of the magistrate judge (# 46) is **ADOPTED**. A final judgment shall be entered denying the petition.

SIGNED at Beaumont, Texas, this 8th day of March, 2023.

Handwritten signature of Marcia A. Crone in cursive script.

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE