

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

CR 17-50066

Plaintiff,

vs.

DWIGHT THUNDER SHIELD,

Defendant/Petitioner.

DEFENDANT’S PETITION FOR
MANDAMUS RELIEF OR,
ALTERNATIVELY, HABEAS
CORPUS RELIEF PURSUANT
TO 28 U.S.C. § 2241

Petitioner, Dwight Thunder Shield, the Defendant above-named, by his attorney, Assistant Federal Public Defender Jennifer Albertson, respectfully moves this court, pursuant to the All Writs Act, 28 U.S.C. § 1651(a)¹, for its order in mandamus directing the United States Bureau of Prisons to credit petitioner with an additional 292 days of federal custody and immediately release Petitioner. Alternatively, Petitioner seeks habeas corpus relief under 28 U.S.C. 2241 and the order of this court similarly ordering his immediate release by the United States Bureau of Prisons.

BACKGROUND

An indictment was filed April 18, 2017, charging Petitioner with assault on a federal officer, a law enforcement officer employed by the Oglala Sioux Tribe Department of Public Safety, in violation of 18 U.S.C. 111(a). Since Petitioner at the time was being held in the OST jail, the government applied for a writ of habeas corpus ad prosequendum on April 24, 2017.

¹ This statute, last amended in 1949, provides “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

(Doc. 5.) The court granted the requested writ on April 25, 2017. (Doc. 6.) Petitioner initially appeared before the magistrate on April 28, 2017, and was ordered to be detained pending trial. (Docs. 8, 12.)

Pursuant to a plea agreement, (Doc. 26), Petitioner pled guilty as charged on July 28, 2017, before the magistrate. His plea was accepted by the court and petitioner adjudicated guilty on July 31, 2017. (Docs. 30-33, 34.) A final presentence report was filed January 16, 2018. (Doc. 38.)

Sentencing occurred January 22, 2018. At that time, Petitioner was sentenced to serve 14 months in custody and three years thereafter on supervised release. (Doc. 41.)² The court's written judgment and commitment order was filed January 24, 2018. (Doc. 42.) Petitioner was thereafter held in the Pennington County Jail until February 1, 2018, and in the jail at Winner, South Dakota, until February 12, 2018, until released into the physical custody of the United States Bureau of Prisons to serve his sentence.

Petitioner is currently being held in custody by the Bureau of Prisons at its correctional institution in Florence, Colorado. According to BOP's inmate locator website, Petitioner's scheduled release date is December 15, 2018. See, <https://www.bop.gov/inmateloc/> (last visited September 27, 2018).

² The low end of Petitioner's guideline range was 18 months. The court granted Petitioner a reduction of four months for time served in tribal jail until formally transferred into federal custody on April 25, 2017.

On July 27, 2018, Petitioner pro se filed a motion seeking clarification of the credit due him for time served. In this filing, Petitioner submitted BOP had no record of the time, nearly 9 months, he had served in federal custody at the time of his January 22, 2018, sentencing. Petitioner asked for clarification of his release date – then February 7, 2019 – set by the Bureau of Prisons. No response to Petitioner’s pro se motion has been filed.

RELEVANT FACTS

1. Petitioner was indicted April 18, 2017. He was charged with one count of assault on a federal officer in violation of 18 U.S.C. 111(a).

2. When arrested on the indictment, Petitioner was in tribal custody being held in the jail of the Oglala Sioux Tribe at Pine Ridge, South Dakota. Accordingly, the government applied for a writ of habeas corpus ad prosequendum on April 24, 2017. The government’s application was granted and a writ issued by the district court on April 25, 2017, at which time Petitioner formally went into federal custody.

3. Petitioner thereafter was held in the Pennington County Jail at Rapid City, South Dakota. He was sentenced January 22, 2018, to a term of 14 months. On February 1, 2018, he was transferred to the local jail at Winner, South Dakota, where he remained until February 12, 2018, when he was taken into BOP’s physical custody. *See*, attached letter of August 2, 2018, from Lisa Whiteface, Operations Supervisor, United States Marshal Service at Rapid City.

4. Petitioner’s 14-month sentence, from and after January 22, 2018, the date of his sentencing, comprises 424 days to March 22, 2019 – the date 14 months after imposition of Petitioner’s sentence. From April 25, 2017, when Petitioner was first taken into federal custody

until February 12, 2018, when he was taken into the physical custody of the Bureau of Prisons from the jail at Winner, South Dakota, 292 days passed.

5. From January 22, 2018, 14 months - to March 22, 2019 - equals 424 days. Crediting Petitioner's 292 days spent in the Pennington County and Winner jails while in federal custody awaiting sentencing and transport after sentencing leaves only 132 days of sentencing time left to have served when Petitioner went into BOP's physical custody. Applying this time subsequent to Petitioner's January 22, 2018, sentencing date arrives at a calculated out date of June 14, 2018 - three and a half months ago. Petitioner, however, was not released at that time. He remains in BOP custody with a current release date of December 15, 2018 – still two and a half months from now – and 6 months after petitioner asserts he should have been released.

6. Petitioner, through counsel, asked for clarification on August 3, 2018, from the Bureau of Prisons sentence computation center in Grand Prairie, Texas, but to date has received no response.³

³ Petitioner again on September 28, 2018, faxed a letter to the Bureau's computation center asking for clarification of his release date and why he has not been credited with his pre-sentence time in federal custody. Petitioner makes this filing because time is of the essence and petitioner cannot afford to simply wait for a response to his inquiry, if any, from the Bureau of Prisons.

ARGUMENTS

A. Mandamus Relief

“The issuance of a writ of mandamus is an extraordinary remedy reserved for extraordinary situations.” *In re MidAmerican Energy Co.*, 286 F.3d 483, 486 (8th Cir. 2002) (per curiam), citing *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988). Petitioner respectfully submits his case presents an extraordinary situation justifying mandamus relief. Petitioner seeks mandamus relief from this court because he has no other timely and adequate remedy available to him given the short time remaining before Petitioner’s otherwise scheduled release date of December 15, 2018. *See Taylor v. Barnhart*, 399 F.3d 891, 894 (8th Cir. 2005) (mandamus relief only appropriate if petitioner has no adequate remedy).

Under 28 U.S.C. § 1361, district courts have original jurisdiction over any mandamus action “to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” “The writ of mandamus is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty.” *Hatcher v. Heckler*, 772 F.2d 427, 432 (8th Cir. 1985). Stated another way, a party seeking mandamus relief must “ ‘have no other adequate means to attain the relief he desires and [must show that his] right to issuance of the writ is clear and undisputable.’ ” *In re Mo. Dep’t of Natural Res.*, 105 F.3d 434, 436 (8th Cir. 1997) (alteration in original) (quoting *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (per curiam)).

In Petitioner’s case, he has no other adequate means by which to present his claim to this court given the short timeframe in which meaningful relief is available and may be granted

Petitioner. Petitioner has shown he has, for whatever reason, been denied appropriate credit against his sentence for time served in federal custody while awaiting sentencing in his case and, thereafter, transfer to the physical custody of the Bureau of Prisons.

Petitioner submits he has already been detained in custody by the Bureau of Prisons more than three months beyond the time when he should have been released had he received the credit he was due for time spent in federal custody prior to his sentencing by this court. In this case, issuance of a writ of mandamus by this court directed to the Bureau of Prisons ordering Petitioner's immediate release from custody is necessary to prohibit and prevent the Bureau of Prisons from continuing to detain Petitioner in custody beyond the time when he was entitled to and should have been released.

B. Habeas Corpus Relief, 28 U.S.C. § 2241

In the alternative to his request for immediate mandamus relief, Petitioner respectfully petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 directing the Bureau of Prisons to forthwith release Petitioner from federal custody under this court's judgment and commitment order filed January 24, 2018, pursuant to Petitioner's sentencing by this court on January 22, 2018, to imprisonment for a term of 14 months. (Doc. 41, 42.)

As shown by Petitioner above, Petitioner has already been retained in custody by the Bureau of Prisons longer than necessary as a consequence of this court's sentencing of petitioner to 14 months of imprisonment on January 22, 2018, because the Bureau of Prisons has failed to credit Petitioner for federal time served while awaiting sentencing from April 25, 2017, to

January 22, 2018, and thereafter while awaiting transfer into the Bureau of Prison's custody which occurred on or about February 12, 2018.

This court has jurisdiction to grant Petitioner's request for habeas corpus relief as provided by 28 U.S.C. § 2241(a) ("Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."). Relief by way of a writ of habeas corpus extends to Petitioner because he is in custody under the authority of the United States for a past violation of a law of the United States. *Id.*, subsection (c)(1), (3). The Eighth Circuit Courts of Appeals has held section 2241 permits challenges to the execution of an inmate's sentence. *See, Nichols v. Symmes*, 553 F.3d 647, 649 (8th Cir. 2009).

WHEREFORE, Petitioner respectfully requests that a writ of mandamus be issued by this court directing the United States Bureau of Prisons to immediately release Petitioner from his confinement at the Bureau's correctional facility in Florence, Colorado. Alternatively, Petitioner likewise requests a writ of habeas corpus pursuant to 28 U.S.C. § 2241 be immediately issued providing Petitioner with the same relief from his continued incarceration.

Dated this 2nd day of October, 2018.

Respectfully submitted,

NEIL FULTON
Federal Public Defender
By:

/s/ Jennifer Albertson

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