

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS A. PEREZ,

Defendant.

ORDER

93-CR-0008-C

Defendant Luis A. Perez has filed a “Petition requesting clarification and verification of sentence,” in which he asks for an adjustment of his sentence. He alleges that when he was sentenced in his court on August 11, 1993, he was serving a thirteen-year sentence, that the court could not have imposed his ten-year sentence to run concurrently with his undischarged thirteen- sentence because the thirteen years would have “eat-up the ten (10) years and no sentencing purpose would have been achieved for punishing the offense committed date 01-13-1993, therefore would have been impossible,” Pet., dkt. #221, at 2, but that the court should have imposed the ten-year sentence to run partially concurrently with the remaining portion of the thirteen-year sentence. Defendant contends that this should have been done because the victim testified that defendant had attacked him for a

kilogram of cocaine lost in 1987 and that the victim was a confidential informant and that defendant had told the victim that he wanted to kill someone and was planning to kill the victim for being an informant. (It is hard to know why defendant thinks that these are reasons for reducing his sentence.) Defendant alleges that the Bureau of Prisons charged him with having violated Bureau of Prison policies for engaging in the same crime for which he was sentenced in this court. He was punished for his prison behavior by losing all his statutory good time and having to serve five years at the Bureau of Prisons' maximum security prison at Marion, Illinois.

Defendant argues that the Bureau of Prisons' action violated his right to be free from double jeopardy. Moreover, he contends, the bureau extended his prison term unreasonably by taking away his statutory good time and thereby requiring him to wait to begin serving the sentence imposed on him in this court.

It is difficult to tell exactly what defendant is seeking in this "petition." If he is suing under 28 U.S.C. § 2255, he has waited far too long to file his petition. Once the AntiTerrorism and Effective Death Penalty Act took effect on April 24, 1996, defendant had until April 24, 1997, in which to file a § 2255 petition in federal court. He did not file this petition until April 29, 2003.

If defendant is seeking a "correction" of his sentence as it was imposed in this court, he has no remedy available to him. With three exceptions, this court lacks authority to

correct a sentence once it is imposed. 1) Within seven days of the imposition of sentence, the court may correct a sentence imposed as a result of arithmetical, technical or other clear error. Fed. R. Crim. P. 35(c); 2) the court may correct a sentence following remand from a court of appeals, Rule 35(a); or 3) the court may reduce a sentence upon motion by the government brought pursuant to Rule 35(b). None of these exceptions applies to defendant. The seven-day period has long since passed; the court of appeals did not remand his case to this court; and the government has not moved to reduce his sentence.

If defendant is seeking a determination that the Bureau of Prisons has miscalculated his sentence and has failed to give him the sentence credit to which he is entitled, he must pursue that issue within the Bureau of Prisons. Romandine v. United States, 206 F.3d 731, 736 (7th Cir. 2000) (“Requests for sentence credit, or for recalculation of time yet to serve, do not come under § 2255. They must be presented to the Attorney General (or her delegate, the Bureau of Prisons), and adverse decisions may be reviewed by an action under 28 U.S.C. § 2241, or perhaps a suit under the Administrative Procedure Act (to the extent 18 U.S.C. § 3625 permits.)”). In other words, defendant must exhaust the administrative remedies available to him, by following the procedures set out by the Bureau of Prisons. Only after he has done that may he seek review of the bureau’s decision to deny him sentence credit and then only in a federal district court that has jurisdiction over his custodian. At the present time, defendant is in prison in Indiana. If he is still there after he

has exhausted his administrative remedies, he must sue in federal court in Indiana.

In any format, defendant's petition is not one that this court can entertain. Therefore, I must dismiss it for lack of jurisdiction.

ORDER

IT IS ORDERED that defendant Luis A. Perez's petition for clarification and verification of sentence computation is DISMISSED for lack of jurisdiction.

Entered this 13th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge