

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

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JULIUS NOBLE,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.  
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ORDER

04-C-514-C

This is a petition for a writ of habeas corpus. Petitioner Julius Noble, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, claims that he is in custody in violation of the laws or Constitution of the United States. 28 U.S.C. §2241. Petitioner has paid the \$5 fee for filing his petition. In his petition, petitioner contends that the Federal Bureau of Prisons violated his statutory and constitutional rights when it transferred him to the Illinois Department of Corrections on the basis of a parole revocation warrant. Also, petitioner argues that the Federal Bureau of Prisons violated his statutory and constitutional rights when it refused to credit him for 181 days he spent in federal prison prior to his transfer to Illinois.

I conclude that the question whether the Bureau of Prisons had legal authority to act

on the warrant issued by the State of Illinois by transferring petitioner to the Illinois Department of Corrections is irrelevant to the question whether petitioner's present custody violates the Constitution or laws of the United States. In addition, I conclude that petitioner is not entitled to double credit for time served. Finally, because the Bureau of Prisons transferred petitioner to Illinois for violating parole conditions, the Interstate Agreement on Detainers does not apply. This petition will be dismissed for petitioner's failure to show that he is in custody in violation of the Constitution or the laws of the United States.

From petitioner's verified petition and accompanying exhibits, I find the following facts.

#### FACTS

On June 4, 2001, Springfield, Illinois police arrested petitioner on local charges of possession of a firearm and possession of marijuana. On August 7, 2001, a federal warrant was issued against petitioner for similar violations. On August 8, 2001, the Illinois Department of Corrections issued a detainer against petitioner for possible parole violations. The state dismissed its charges of firearm and marijuana possession against petitioner on August 23, 2001.

Petitioner was released into federal custody. On February 25, 2002, the United

States District Court for the Central District of Illinois sentenced him to sixty months of incarceration. At no time during the federal proceedings did the court order petitioner to be turned over to the Illinois Department of Corrections to answer for the possible parole violation detainer. Petitioner arrived at the Federal Correctional Institution - Beckly, on May 2, 2002 to begin serving his federal sentence. On February 4, 2003 petitioner was transferred to the Federal Correctional Institution - Petersburg. At Petersburg, petitioner was enrolled in a drug program and attempted to enroll in some college and remedial education programs. After petitioner had served approximately one year and five months in federal prison, on July 14, 2003, the federal Bureau of Prisons discovered the outstanding August 8, 2001 detainer for possible parole violations issued by the Illinois Department of Corrections. The Bureau then turned petitioner over to Illinois and issued a detainer for his return after Illinois finished with him. Other than the warrant issued by the Illinois Department of Corrections, there existed no executive or court order for petitioner's release to the Illinois Department of Corrections' custody.

The Illinois Department of Corrections deemed petitioner to be in violation of his parole conditions and calculated his parole violation term beginning February 25, 2002 (the date petitioner was sentenced in federal court), resulting in an August 24, 2002, release date. In other words, the Illinois Department of Corrections gave petitioner credit for six of the seventeen months he had been incarcerated in federal prison. On August 12, 2003, the

Illinois Department of Corrections released petitioner back into the custody of the Bureau of Prisons on the federal detainer. The Illinois Department of Corrections had intended to release petitioner into society, specifically Chicago. However, upon contacting petitioner's mother, the Illinois Department of Corrections realized that petitioner still owed the Bureau of Prisons more incarceration time.

Once petitioner returned to the custody of the Bureau of Prisons, the Bureau failed to credit his sentence with the full 181 days of the time he had served in the Bureau of Prisons before being transferred to the Illinois Department of Corrections. However, this 181 days was credited toward the Illinois Department of Corrections' parole violation sentence from February 25, 2001 to August 24, 2002.

#### OPINION

As an initial matter, I note that a petitioner seeking habeas corpus relief must exhaust his administrative remedies before filing in federal court absent a showing of cause and prejudice. Sanchez v. Miller, 792 F.2d 694, 697 (7th Cir. 1986) (ordinarily federal prisoners are required to exhaust administrative remedies before petitioning for writ of habeas corpus). The Administrative Remedy Procedure consists of the inmate's completing the appropriate Bureau of Prisons administrative remedy forms and submitting them to the warden, the regional director of the Bureau of Prisons, and the Bureau of Prisons' General Counsel,

according to the timetable set out in 28 C.F.R. §§ 542.14 and 542.15. From the documentation petitioner has submitted with his petition, it appears that he has exhausted his administrative remedies.

Petitioner maintains three claims under his petition for habeas corpus relief. First, he argues that the Bureau of Prisons violated his statutory and constitutional rights when they transferred him to the Illinois Department of Corrections on the basis of the August 8, 2001, warrant in regard to possible parole violations. Petitioner contends that absent an executive or court order, the Bureau of Prisons had no authority to transfer him to the custody of the Illinois Department of Corrections. To the extent that petitioner is attacking the sufficiency of the warrant, his argument is unavailing. Even if the warrant were insufficient to authorize the Bureau of Prisons to release him into state custody, his temporary transfer of custody did not affect the validity of the federal sentence he is presently serving.

Petitioner's second claim is that the Bureau of Prisons violated his statutory and constitutional rights when it failed to credit him with 181 days that he had served in federal prison before being transferred to the Illinois Department of Corrections. Petitioner admits, however that Illinois credited the 181 days toward the parole violation sentence from February 25, 2001 to August 24, 2002. Furthermore, the Bureau of Prisons Program Statement 5880.28, Sentence Computation Manual - CCCA (CN-03) states:

Statutory Authority: Prior Custody time credit is controlled by 18 U.S.C. § 3585(b), and states, “A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences - -

1) as a result of the offense for which the sentence was imposed; or  
2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; **that has not been credited against another sentence.**”

(Emphasis added). I understand petitioner to argue that he is entitled to double credit for the 181 days he served in federal prison before being transferred to the Illinois Department of Corrections. Petitioner has no such entitlement. The idea of issuing double credit for a state and federal sentence has been labeled an “absurdity” by the Court of Appeals for the Seventh Circuit. Culotta v. Pickett, 506 F.2d 1061, 1064 (7th Cir. 1974) (citing Siegel v. United States, 436 F.2d 92, 95 (2d Cir. 1970) rejecting claim of state prisoner who was given credit on state sentence for time spent during federal detention for similar credit on his federal sentence).

Finally, petitioner argues that the Bureau of Prisons violated his rights under the anti-shuttling provision, Article IV, of the Interstate Agreement on Detainers (18 U.S.C. App. § 2) when it transferred him to Illinois. Petitioner asserts that the transfer interrupted his rehabilitation program at the Federal Correctional Institution - Petersburg.

Article IV of the Interstate Agreement on Detainers gives the receiving state in which an “untried indictment, information or complaint is pending . . . the right to have a prisoner

against whom it has lodged a detainer . . . made available for trial.” Alabama v. Bozeman, 533 U.S. 146, 150 (2001) (citing Article IV(a)). Furthermore, the anti-shuttling provision of the Agreement requires that the trial must be “‘had . . . prior to the prisoner’s being returned to the original place of imprisonment’; otherwise, the charges ‘shall’ be dismissed with prejudice.” Id. (citing Article IV(e)).

The Bureau of Prisons transferred petitioner to the custody of the Illinois Department of Corrections pursuant to a warrant for a possible parole violation. The Interstate Agreement on Detainers does not apply to detainers based on parole or probation violation charges. In Carchman v. Nash, 473 U.S. 716, 725-28 (1985), the United States Supreme Court concluded that the language in the Agreement makes clear that the phrase “untried indictment, information or complaint” in Article III (the same language used in Article IV at issue in petitioner’s case) “refers to criminal charges pending against a prisoner.” The Court noted that “[a] probation-violation charge, which does not accuse an individual with having committed a criminal offense in the sense of initiating a prosecution, thus does not come within the terms of Art. III.” Id. I conclude that the Bureau of Prisons did not violate the Interstate Agreement on Detainers when it transferred petitioner to the Illinois Department of Corrections pursuant to a warrant for parole violations.

ORDER

IT IS ORDERED that Petitioner Julius Noble's petition for a writ of habeas corpus is DISMISSED for petitioner's failure to show that he is in custody in violation of the constitution or laws of the United States. The clerk of court is directed to enter judgment for respondent Joseph Scibana and close this case.

Entered this 3rd day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge