

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES MONTROY,

Defendant.

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ORDER

05-cr-177-wmc

On May 15, 2013, defendant James Montroy's supervised release was revoked for (1) lying to his probation officer about where he was residing and (2) failing to submit restitution payments for all but two months between December 2011 and March 2013. Immediately following revocation, Montroy was sentenced to six month of imprisonment. Since that time, the defendant has filed two motions, both of which this court will deny for lack of jurisdiction, among other reasons.

Montroy's first motion seeks to amend the judgment of revocation (dkt. #71), so that he receives credit for the time he served in official state custody leading up to the revocation of his federal supervised release term. The court has very limited authority to amend a criminal judgment once entered. Pursuant to Fed. R. Crim. P. 36, a judgment may be amended at any time for a clerical error. Pursuant to Fed. R. Crim. P. 35, a judgment may also be amended within 14 days of sentencing, but only to correct an arithmetical, technical or other clear error. Montroy points to neither a clerical nor a technical error in his sentence.

Instead, he seeks credit for time served in state detention toward the service of his federal sentence.

A term of imprisonment begins "on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the

official detention facility at which the sentence is to be served.” 18 U.S.C. § 3585(a). Credit for prior custody is authorized only as provided in § 3585(b), which states that a “defendant shall receive credit toward the service of a term of imprisonment for any time 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.” Because the Bureau of Prisons (BOP) “is the agency charged with administering 18 U.S.C. § 3585(b),” the United States Supreme Court has given great deference to its interpretation of sentence administration statutes. *See Reno v. Koray*, 515 U.S. 50, 60, 115 S.Ct. 2021, 132 L.Ed.2d 46 (1995).

Here, the BOP has apparently concluded that Mr. Montroy received all of the credit he is due under the provisions of 18 U.S.C. § 3585 and BOP Program Statement 5880.28, Sentence Computation Manual. Even if this court were inclined to question that conclusion, it is limited to reviewing the BOP’s decisions after all administrative remedies have been exhausted. Moreover, this court may issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 only when a defendant is claiming the fact or duration of his or her confinement violates the United States Constitution or laws or treaties of the United States. Finally, the proper respondent in a § 2241 proceeding is the person who has custody over the petitioner, meaning district courts may issue writs only “within their respective jurisdictions” consistent with 28 U.S.C. § 2241(a) and the holding in *Kholiyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006).

As a result, even if Montroy had a claim for unlawful detention, he must seek a writ of habeas corpus in the district where he is currently detained, and then only if (1) he has

exhausted all of his administrative remedies within the BOP and (2) his continued custody violates federal law. Since none of those things appear to apply to Montroy's motion to amend judgment in this court, it must be denied.

The defendant's second motion asks that this court recommend he be placed in Eau Claire County Jail where his family is located (dkt. #72). This motion must also be denied for lack of both a legal and factual basis for this court to do so. As described above, the court's ability to amend is expressly limited under Fed. R. Crim. P. 35 and 36 after entered judgment. Even if this court retained the legal authority to change its original recommendation, this placement request would appear to be a non-starter for federal prisoners since BOP generally does not contract to place prisoners in county jail post-sentencing. Moreover, the court recommended the Rochester facility for a specific, factual reason, having to do with his undergoing certain medical and psychological tests.

If Montroy now has good grounds to petition the BOP directly for placement in a different facility nearer his family, he is obviously free to do so and this court has no objection, but the BOP is now in the best position to assess the merits of such a placement.

#### ORDER

IT IS ORDERED that defendant James Montroy's motions to amend the revocation judgment (dkt. #71) and change placement recommendation (dkt. #72) are DENIED.

Entered this 9th day of September, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge