

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES W. MAASS,

Defendant.

ORDER

99-CR-0023-C-01

Defendant James W. Maass filed a motion for pre-detention sentence credit on July 20, 2004. In an order entered August 3, 2004, I denied the motion on the ground that it appeared from the records of the United States Probation Office that defendant had received a total of 316 days of credit for the time he spent in state or federal custody awaiting sentencing in this case. Defendant moved for reconsideration of this order. I directed the United States Attorney to respond to the motion for reconsideration, which it did on September 22, 2004, and I gave defendant an opportunity to reply to the government's response. Defendant did not file a reply within the time allotted but moved for and was granted an extension of time. He moved for additional extensions and was given until December 15, 2004, in which to file a reply. Since he made the last request for an extension

on November 8, 2004, he has not communicated with the court in any way. He did not file a reply.

I conclude from defendant's failure to file a reply to the government's response and from his failure to communicate with the court that he has abandoned his motion for reconsideration. In any event, it would be denied for his inability to show that the August 3, 2004 order was erroneous. Even if defendant's motion for credit was not mooted by the fact that he was no longer in federal custody and could not benefit from any federal sentence credit, he could not show that he is entitled to any additional credit.

In moving for reconsideration, defendant alleged that he was wrongly denied 131 days of credit towards his federal sentence for the time he was in custody awaiting resolution of the federal criminal charges against him. As the government's response shows, defendant is misinformed about the status of his custody. While proceedings were pending in this court, he was incarcerated in state prison and made his appearances here pursuant to writs of habeas corpus ad prosequendum. Under those writs, he was "borrowed" by the federal government for its proceedings; the state did not lose custody of him. As a person in state custody, serving a sentence imposed upon him in state court, the time he was serving was not federal time and would not have been credited to his federal sentence.

ORDER

IT IS ORDERED that defendant James W. Maass's motion for reconsideration of the order entered on August 3, 2005, is DENIED.

Entered this 7th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge