

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

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HERBERT R. KEGLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.  
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ORDER

01-CR-0062-C-01

Petitioner Herbert R. Kegley has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, in which he asks the court to award him credit for the time spent in official detention before his federal sentence began. The petition will be denied without prejudice to allow petitioner to exhaust his administrative remedies within the Bureau of Prisons.

Petitioner was sentenced in this court on October 11, 2002. Earlier, on February 22, 2002, he had been sentenced in state court in Florida to a term of 48 months on an unrelated robbery. When the Florida court imposed the sentence, it ordered it to run concurrently with “any active sentence being served.” Also, the court gave petitioner 236 days of credit for time spent in custody in connection with the robbery charge. When

petitioner was sentenced in this court on his federal bank robbery charge, he asked that the sentence run concurrently with his Florida state sentence. I refused that request and sentenced petitioner to a term of 37 months, to run consecutively to the Florida sentence.

In a motion filed on December 10, 2002, petitioner asked for an amendment to his sentence to provide that his federal sentence run concurrently with his Florida sentence. I rejected that request. Now petitioner has filed a petition for a writ of habeas corpus, seeking to obtain credit for the time he has spent in custody since the federal detainer was first lodged against him on July 13, 2001. However, he has never sought sentence credit from the Bureau of Prisons, although doing so is a prerequisite to bringing a petition for a writ of habeas corpus under § 2241. Clemente v. Allen, 120 F.3d 703, 704-05 (7th Cir. 1997) (“we review a claim concerning the computation of a sentence only after administrative remedies have been exhausted”). Therefore, I must deny the petition without prejudice to petitioner’s filing it again after he has exhausted his remedies. If petitioner cannot exhaust his remedies until he is actually in federal custody, he will have to wait until he has served his state sentence and has been transferred to federal custody to begin the exhaustion process.

#### ORDER

IT IS ORDERED that petitioner Herbert R. Kegley’s petition for a writ of habeas brought pursuant to 28 U.S.C. § 2241 is DENIED without prejudice for petitioner’s failure

to exhaust his administrative remedies within the Bureau of Prisons.

Entered this 4th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge