

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

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CLYDE CHARLES, JR.

Petitioner,

MEMORANDUM and ORDER

v.

07-C-366-S

RICARDO MARTINEZ,

Respondent.

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Petitioner filed the above entitled petition for a writ of habeas corpus under 28 U.S.C. § 2241 claiming that he was denied 156 days of prior custody credit. Respondent responded on August 14, 2007. Petitioner filed his traverse on September 5, 2007.

FACTS

Petitioner Clyde Charles, Jr., is currently incarcerated at the Federal Correctional Institution, Oxford, Wisconsin. On January 15, 1992 petitioner was arrested by state authorities in Knox County, Illinois on state charges of attempted murder and armed robbery.

On October 2, 1992 petitioner was sentenced in the United States District Court for the Central District of Illinois to 295 months in prison for federal offenses of Extortion and Felon in Possession of a Firearm committed on January 9, 1992. On October 5, 1992 petitioner was sentenced on the state charges to a 25 year

state sentence that was ordered to run concurrent with his federal sentence.

Because petitioner is serving concurrent non-federal and federal sentences he is eligible to receive Kayfez credit. See Bureau of Prisons (BOP) Program Statement 5880.28. Sentence Computation Manual (CCA of 1984). The Raw Effective Full Term (EFT) date of a Sentence is determined by adding the total length of the sentence to be served to the beginning date of the sentence without regard to time credit. If the Raw EFT date of the non-federal sentence is later than the Raw EFT date of the federal sentence, and if the non-federal Raw EFT date, adjusted for qualified non-federal pre-sentence credit, is earlier than the federal Raw EFT date then the petitioner is entitled to Kayfez credit for the difference.

Petitioner's state Raw EFT date is October 4, 2017 which is later than his federal Raw EFT date, May 1, 2017. Petitioner was awarded 261 days of pre-sentence credit to his state sentence which adjusted his state Raw EFT date to January 16, 2017, 105 days earlier than his federal Raw EFT date. According to BOP policy he was awarded 105 days of Kayfez credit.

#### MEMORANDUM

Petitioner claims that he is entitled to 156 days of prior custody credit. The Bureau of Prisons controls the calculation of federal terms of imprisonment pursuant to 18 U.S.C. § 3585. Prior

custody credit may be awarded in certain circumstances set forth at 18 U.S.C. § 3583(b) as follows:

Credit for prior custody. 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.

There is a limited exception to this rule. See Kayfez v. Gasele, 993 F.2d 1288, 1290 (7<sup>th</sup> Cir. 1993); BOP Program Statement 5880.28, Sentence Computation Manual (CCA of 1984), Page 1-22B and Page 1-22C. According to Kayfez if the Raw EFT date of the non-federal sentence is later than the Raw EFT date of the federal sentence, and if the non-federal Raw EFT date, adjusted for qualified non-federal pre-sentence credit, is earlier than the federal Raw EFT date then the petitioner is entitled to credit for the difference.

Petitioner received the 105 days credit to which he was entitled under Kayfez. Petitioner is not entitled to any additional pre-sentence credit. Accordingly, petitioner's petition for a writ of habeas corpus will be dismissed.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already

provided to undermine this Court's conclusion that his petition must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 6<sup>th</sup> day of September, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge