IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	Case No. 3:97CR00085-003
	)	
v.	)	**OPINION AND ORDER**
	)	
JOSEPH PAUL,	)	By: James P. Jones
	)	Chief United States District Judge
Defendant.	)	

Joseph Paul, Pro Se Defendant.

The defendant, Joseph Paul, who was convicted and sentenced by this court in 1999,[1] has submitted a pleading styled as a Motion to Compel. From the documentation Paul submits with his motion, he is apparently asking the court to compel his former trial attorney to make the United States Bureau of Prisons ("BOP") give him credit against his federal sentence for time served in relation to a prior state sentence. Upon review of the record, I find that Paul's request is without merit and will deny it.

[1] Paul recently received a sentence reduction under the 2007 amendments to the crack cocaine sentencing guidelines.

I

Paul was arrested by local police officers in Pennsylvania in March 1997, on charges of drug trafficking and eluding a police officer.[2] The state court sentenced him on November 17, 1997, to a term of imprisonment of not less than 48 months and not more than 96 months. Federal authorities obtained Paul from state authorities by way of a Writ of Habeas Corpus Ad Prosequendum on April 6, 1998, in order to produce him for federal prosecution. This court sentenced Paul on August 31, 1999, to 180 months imprisonment on drug charges, with the direction that this federal sentence run concurrently with the earlier state sentence.

Federal authorities returned Paul to state authorities on September 27, 1999, and he remained in primary state custody until April 5, 2001, when he was paroled from the Pennsylvania sentence to a federal detainer. Paul received 255 days of credit against his state sentence for jail time served between March 5, 1997, and November 17, 1997. The federal Bureau of Prisons has calculated his federal sentence to begin on the day it was imposed, even though he was not received into the federal prison system until 2001.

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[2] Paul submits copies of the pleadings from a former lawsuit he filed in the United States District Court for the District of Minnesota, which provide these details about his state and federal sentences.

At the federal sentencing hearing on August 31, 1999, the Honorable James H. Michael, Jr., Senior United States District Judge, said to Paul's trial attorney:

> I'm going to run [the sentence] concurrently, but when the Bureau of Prisons comes back to me, it's going straight to you, . . . and you're going to straighten it out. I'm not. . . . It's going to be your baby from this point on. The 180-month [federal] sentence thus imposed will run concurrently with [Paul's] term of imprisonment in . . . Pennsylvania.

(Def.'s Motion, Attach. 1 (portion of sentencing transcript) at 17.) Paul now asks the court to order his trial attorney to comply with the court's oral order at sentencing and compel trial counsel to help him convince the BOP to give him credit against his federal sentence for the time he believes he has earned, to wit, from the time of his arrest on the state charges until the date of his federal sentencing.

II

In the first place, Paul has no right to counsel in post-conviction proceedings, such as an action seeking a different calculation of his term of confinement. *See, e.g., Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("[T]he right to appointed counsel extends to the first appeal of right, and no further.") Thus, in this closed case, Paul has no right to assistance from trial counsel, as he requests in this Motion.

In any event, I find that the BOP's calculation of Paul's term of federal confinement is fully consistent with federal law, the circumstances of Paul's case, and the court's statements at sentencing.[3]

> A federal sentence does not begin to run . . . when a prisoner in state custody is produced for prosecution in federal court pursuant to a federal writ of habeas corpus ad prosequendum. Rather, the state retains primary jurisdiction over the prisoner, and federal custody commences only when the state authorities relinquish the prisoner on satisfaction of the state obligation.

United States v. Evans, 159 F.3d 908, 912 (4th Cir. 1998). Furthermore, pursuant to 18 U.S.C.A. § 3585(a) (West 2000),[4] a federal defendant's sentence does not

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[3] Generally, if an inmate wishes judicial review of the BOP's calculation of his term of confinement, including credit for time served, his appropriate remedy is a petition for a writ of habeas corpus pursuant to 28 U.S.C.A. § 2241 (West 2006), which must be filed in the district of confinement rather than in the sentencing court. *United States v. Miller*, 871 F.2d 488, 490 (4th Cir. 1989). Paul's submissions indicate that he previously filed a § 2241 petition in the United States District Court for the District of Minnesota, which was dismissed as meritless. This court is not the proper forum in which to seek review of the decision of another district court or to bring a claim for jail credit against his sentence under § 2241. The record reflects that Paul is currently housed at a federal prison facility in Fort Worth, Texas. Therefore, a district court in Texas, rather than this court, would have jurisdiction over Paul's § 2241 claims. Because Paul already sought relief under § 2241 on his current claim and this court does not have jurisdiction to address his claims under that statute, I do not find it appropriate to construe his current motion as a § 2241 petition to be transferred to another court.

[4]

> A [federal] sentence to a term of imprisonment commences 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.A. § 3585(a).

commence until he is in custody for purposes of serving that sentence. The sentence begins, at the earliest, when it is imposed. The defendant may receive credit against that sentence for time spent in official detention prior to the date when the sentence commences *unless that time served has already been credited against another sentence*. *See id.*

The record reflects that the state of Pennsylvania had and retained primary jurisdiction over Paul until the day the federal district court imposed his federal sentence. By borrowing Paul from state prison authorities under a writ of habeas corpus ad prosequendum on April 6, 1998, federal authorities did not assume primary custody over him, and so his federal sentence could not commence. Rather, Paul's federal sentence began running on the date of sentencing, August 31, 1999. From that date forward, even after he returned to state prison and continued to receive credit against his state sentence, he also received credit against the federal sentence. Moreover, nothing in the portion of the sentencing transcript Paul submits indicates that Judge Michael intended for Paul to receive credit against his federal sentence for all the time he had served on his state sentence before his federal sentence was imposed. Indeed, because Paul received credit against his state sentence for all of the time served before the federal sentencing date, he cannot also receive credit against

his federal sentence for that time period. Therefore, I find no ground on which Paul is entitled to the credit that he wishes trial counsel to procure for him.

III

For the stated reasons, it is **ORDERED** that the Motion is **DENIED**.

The Clerk will send copies of this Opinion and Order to the defendant at his place of confinement and to the United States Attorney's Office.

ENTER: June 16, 2008

/s/ JAMES P. JONES
Chief United States District Judge