

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

August 11, 2011

Elisabeth A. Shumaker
Clerk of Court

BATTRICK KINSLOW,

Petitioner – Appellant,

v.

J. WANDS, Warden,

Respondent – Appellee.

No. 11-1185
(D.C. No. 1:11-CV-00524-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **MURPHY** and **MATHESON**, Circuit Judges.

Battrick Kinslow, a federal prisoner at the Federal Correctional Institution in Florence, Colorado, appearing pro se, appeals the district court's dismissal of his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Mr. Kinslow argued before the district court that his sentence was improperly calculated. The district

*After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

court found no basis for his claim. We agree and deny his appeal.

Mr. Kinslow has been incarcerated since he was arrested in Tennessee on November 20, 2003. He was convicted in the United States District Court for the Eastern District of Tennessee of conspiracy to distribute narcotics under 21 U.S.C. § 846, distribution of narcotics under 21 U.S.C. § 841, and use of a machine gun during a drug crime under 18 U.S.C. § 946. On July 30, 2004, he was sentenced to 111 months. Mr. Kinslow was also convicted in Tennessee state court of solicitation to commit first degree murder under TENN. CODE ANN. § 39-12-102 and § 39-13-202. On July 13, 2005, he was sentenced to 15 years (180 months).

The state court ordered that Mr. Kinslow receive credit against his sentence for his pretrial incarceration from November 20, 2003 to July 30, 2004. On October 6, 2005, the Eastern District of Tennessee entered an order directing Mr. Kinslow's federal sentence to run concurrently with his state sentence.

Mr. Kinslow argued before the district court and argues on appeal that he should be given credit on his *federal* sentence for the eight months and ten days he spent in jail from November 20, 2003 to July 30, 2004. Mr. Kinslow, however, has already received credit for that same pretrial incarceration period on his state sentence. The relevant federal statute provides that:

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.

18 U.S.C. § 3585(b) (emphasis added).

Because Mr. Kinslow received credit for his pretrial incarceration on his state sentence, he is not entitled to any additional credit against his federal sentence. Regardless of how his credit is applied, Mr. Kinslow will serve up to a total of 172 months less 10 days in prison (180 months for the state offense concurrent with 111 months for the federal offenses, less 8 months and 10 days for the pretrial jail time). *See Kayfez v. Gasele*, 993 F.2d 1288, 1290 (7th Cir. 1993) (explaining that when state and federal sentences run concurrently, credit for time served is taken off the total sentence). The district court correctly dismissed his application for a writ of habeas corpus. We AFFIRM the district court and DISMISS his appeal.

The district court denied Mr. Kinslow's motion for leave to proceed on appeal in forma pauperis pursuant to 28 U.S.C. § 1915 because Mr. Kinslow "has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issue raised on appeal." ROA 33. We agree with the district court and accordingly DENY Mr. Kinslow's motion to proceed in forma pauperis.

ENTERED FOR THE COURT

Scott M. Matheson, Jr.
Circuit Judge