

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 2:19-cr-20293-MSN

JAMES BANK,

Defendant.

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**ORDER DENYING DEFENDANT'S *PRO SE* MOTION FOR CONFINEMENT CREDIT  
*NUNC PRO TUNC* AND ORDER DIRECTING CLERK OF COURT TO MAIL  
DEFENDANT § 2241 FORM**

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This cause comes before the Court on Defendant James Bank's Motion for Confinement Credit *Nunc Pro Tunc*. (ECF No. 22.) For the reasons below, Defendant's Motion is **DENIED**.

**Background**

On October 29, 2019, this matter was transferred to the undersigned from the United States District Court for the Middle District of Pennsylvania pursuant to 18 U.S.C. § 3605. (ECF No. 1.) At the time, Defendant was out on supervised release. (*Id.* at PageID 1.) On November 6, 2019, Defendant was arrested for an alleged supervised release violation. (ECF No. 9.) Defendant was released on bail while he awaited a hearing. (ECF No. 16.) The terms of the release confined Defendant to his home and required him to submit to radio frequency monitoring. (*Id.* at PageID 41.)

On January 7, 2020, the Court held a hearing to determine if Defendant violated his supervised release. (ECF Nos. 18, 19.) The Court found that he did and sentenced him to twenty-

two (22) months incarceration to run concurrently with the sentence in 2:06-cr-20361-MSN. (ECF No. 21 at PageID 47.) Defendant was allowed to self-surrender at a time to be set by the United States Marshal. (*Id.*) Defendant reports that he surrendered to the custody of the Bureau of Prisons on February 25, 2020. (ECF No. 22 at PageID 48.)

Defendant's pending motion, filed on February 1, 2021, requests that he be credited for the time he spent confined to his home before being incarcerated. (ECF No. 22 at PageID 48–49.) Defendant remained on home confinement from the time of his release on bail, (ECF No. 16), to his self-surrender on February 25, 2020. (ECF No. 22 at PageID 48.) In total, Defendant requests that the Court credit him ninety-three (93) days to be applied toward his sentence. (*Id.* at PageID 49.)

### **Analysis**

Defendant does not attack the validity of his sentence, but its execution. (ECF No. 22 at PageID 49.) Motions such as this must be brought under a petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. *See Wright v. United States Bd. of Parole*, 557 F.2d 74, 77 (6th Cir. 1977); *Capaldi v. Pontesso*, 135 F.3d 1122, 1123 (6th Cir. 1998) (citing *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir. 1991)) (“In general, a petition for a writ of habeas corpus under § 2241 is reserved for a challenge to the manner in which a sentence is executed, rather than the validity of the sentence itself.”).

Calculation of a federal prisoner's sentence, including its commencement date and any credit for custody before sentencing, is governed by 18 U.S.C. § 3585, which provides as follows:

- (a) Commencement of sentence.—A 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.

(b) 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.

*Id.*

This Court cannot compute sentence credits under 18 U.S.C. § 3585(b). That task is reserved for the Attorney General. *United States v. Wilson*, 503 U.S. 329, 334 (1992); *United States v. Westmoreland*, 974 F. 2d 736, 737–38 (6th Cir. 1992) (district court cannot consider habeas petition asserting right to sentence credits under 18 U.S.C. § 3585(b) until Attorney General has computed credit and petitioner has exhausted administrative remedies).

Exhaustion of administrative remedies within the BOP is a jurisdictional prerequisite to seeking court review of the BOP's sentence credit calculation. *Westmoreland*, 974 F.2d at 737–38. As it stands, Defendant's motion is the improper procedural vehicle for the relief he seeks. Defendant must make this request under § 2241 after exhaustion of administrative remedies with the Bureau of Prisons. For this reason, Defendant's motion is **DENIED**. The Clerk of Court is hereby **DIRECTED** to mail Defendant the proper 28 U.S.C. § 2241 form.

**IT IS SO ORDERED**, this 2nd of March, 2021.

*s/ Mark Norris*

MARK S. NORRIS

UNITED STATES DISTRICT JUDGE