

MAR 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERMIN VICENTE HERNANDEZ,

Petitioner - Appellant,

v.

NEIL H. ADLER, Warden,

Respondent - Appellee.

No. 08-16958

D.C. No. 1:08-cv-00315-OWW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Fermin Vicente Hernandez appeals pro se from the district court's judgment denying his 28 U.S.C. § 2241 petition for a writ of habeas corpus. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Hernandez contends that the Bureau of Prisons (“BOP”) has improperly calculated his two federal sentences to be partially consecutive. However, the record reflects that the BOP has calculated the sentence as the Eastern District of Tennessee intended. *See* 18 U.S.C. § 3584(a); *cf. Taylor v. Sawyer*, 284 F.3d 1143, 1148-49 (9th Cir. 2002). Moreover, the BOP’s determination of when the sentence began to run did not deny Hernandez pre-sentence credits he was entitled to receive under 18 U.S.C. § 3585(b). *See* 18 U.S.C. §3585(b); *cf.* 18 U.S.C. § 3584(a).

AFFIRMED.