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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JERALD LAVELLE JOHNSON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DENNIS SMITH, Warden,</p> <p>Respondent - Appellee.</p>
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No. 08-15401

D.C. No. 07-cv-00714-OWW

MEMORANDUM*

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

Submitted July 19, 2010**

Before: B. FLETCHER, REINHARDT, and WARDLAW, Circuit Judges.

Former federal prisoner Jerald Lavelle Johnson appeals pro se from the district court’s judgment denying his 28 U.S.C. § 2241 petition. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

Johnson contends the district court erred by denying his petition because the

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

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

sentencing court ordered his federal sentence to run concurrent with the state sentence he was serving, and thus he was entitled to credit for all of the time he served in state custody. This contention fails because Johnson's federal prison term could not begin earlier than the date on which it was imposed. *See* 18 U.S.C. § 3585(a). Further, contrary to Johnson's contention, U.S.S.G. § 5G1.3 does not assist his case. *See United States v. Arellano-Torres*, 303 F.3d 1173, 1180 (9th Cir. 2002) (affirming district court's imposition of consecutive sentence under § 5G1.3(c) where defendant had committed the federal crime while he was on state probation); *see also* U.S.S.G. § 5G1.3 cmt. n.3(E) (recommending that any downward departure be clearly stated on the judgment). Accordingly, the district court did not err by concluding that Johnson was not entitled to relief.

AFFIRMED.