

SEP 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GARMON COATS,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DAN SMITH,</p> <p>Respondent - Appellee.</p>

No. 09-15663

D.C. No. 1:08-cv-00666-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted August 23, 2010**

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

Garmon Coats 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.

Coats contends the district court erred by denying his petition because he

* 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).

was entitled to credit toward his federal sentence for the time he spent in state custody. This contention fails because the state maintained primary jurisdiction over Coats when he appeared in federal court. *See Taylor v. Reno*, 164 F.3d 440, 445 (9th Cir. 1998). Coats was therefore not in federal custody for purposes of commencing his federal sentence. *See id.*; *see also Thomas v. Brewer*, 923 F.2d 1361, 1366-67 (9th Cir. 1991) (state prisoner's status does not change when transferred to federal custody by writ of habeas corpus ad prosequendum). Accordingly, the district court did not err by concluding that Coats was not entitled to relief.

AFFIRMED.