

OCT 29 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASTARTE DAVIS-RICE,

Petitioner - Appellant,

v.

PAUL COPENHAVER, Warden,

Respondent - Appellee.

No. 08-15968

D.C. No. 3:07-cv-05972-MMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Federal prisoner Astarte Davis-Rice appeals pro se from the district court's judgment dismissing her 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we remand to the district court for reconsideration.

* 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).

Davis-Rice contends that the Bureau of Prisons failed to give her credit for time spent in custody prior to sentencing. The district court dismissed her petition as duplicative of a previously filed action. In her petition, Davis-Rice conceded that she previously raised this claim. However, the district court previously dismissed the claims as unexhausted, and Davis-Rice alleged in her petition that the claims are now exhausted. We remand to the district court for reconsideration because the order did not address Davis-Rice's allegation that her previously dismissed claims are now exhausted.

REMANDED.