

APR 11 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFI SHOTLAND,

Petitioner - Appellant,

v.

DAVID DUNCAN,

Respondent - Appellee.

No. 08-17243

D.C. No. 4:08-cv-00188-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, Chief District Judge, Presiding

Submitted April 5, 2011**

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Rafi Shotland 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. § 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Shotland contends that the time spent in federal custody awaiting sentence should be credited toward his federal sentence. Contrary to Shotland's contention, the district court did not err in determining that Shotland was not entitled to credit toward his federal sentence for the time he spent in presentence custody. The state maintained primary jurisdiction over Shotland during this period, and Shotland was given credit for this time toward his state sentence. *See Thomas v. Brewer*, 923 F.2d 1361, 1366-67 (9th Cir. 1991) (state retains primary jurisdiction over state prisoner transferred to federal custody by writ of habeas corpus *ad prosequendum*); *see also United States v. Wilson*, 503 U.S. 329, 334 (1992) (under 18 U.S.C. § 3585(b), a defendant may not receive double credit for presentence detention time).

We construe appellant's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (*per curiam*).

AFFIRMED.