

MAR 12 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN LEONARD CALVERT,

Petitioner - Appellant,

v.

J. E. THOMAS, Warden,

Respondent - Appellee.

No. 12-35169

D.C. No. 3:09-cv-00213-JE

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

Argued and Submitted March 5, 2013
Portland, Oregon

Before: TASHIMA, CLIFTON, and BEA, Circuit Judges.

John Calvert appeals the district court's denial of his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 1291 and § 2253(a), and we affirm.

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

Calvert challenges the decision of the Bureau of Prisons not to grant him prior-custody credit, against his 270 month federal sentence, for time he served in Washington state custody before his federal sentence was imposed. His claim fails.

First, the Bureau of Prisons had the authority to calculate prior-custody credit, and was not bound by the sentencing court's recommendation. *See United States v. Wilson*, 503 U.S. 329, 333-35 (1992); *Taylor v. Reno*, 164 F.3d 440, 446 (9th Cir. 1998).

Second, pursuant to 18 U.S.C. § 3585(b), the Bureau properly denied Calvert's request because that time had already been credited against his state sentence. *Wilson*, 503 U.S. at 333.

Nothing in our decision suggests that Calvert cannot seek an adjustment of his sentence with the original sentencing court. The government indicated that it would not object to the sentencing court considering whether Calvert's sentence should be corrected in light of the Bureau's calculation of Calvert's projected release date and the conclusion of these proceedings.

AFFIRMED.