

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

DANIEL MARTINEZ,

Petitioner-Appellant,

v.

CATRICIA HOWARD,

Respondent-Appellee.

No. 22-16988

D.C. No. 4:21-cv-00230-RM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

Rosemary Márquez, District Judge, Presiding

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Federal prisoner Daniel Martinez appeals pro se from the district court's judgment denying his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see Schleining v. Thomas*, 642 F.3d 1242, 1246 (9th Cir. 2011), we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Martinez contends that the district court erred in concluding that the Bureau of Prisons (“BOP”) properly calculated how much credit from his state custody could be applied to his federal sentence. He maintains that the BOP’s failure to credit him for time spent in state custody from April 2, 2013, when he was sentenced in Los Angeles Superior Court, through March 19, 2015, when he was sentenced in federal court, violates his federal judgment, 18 U.S.C. § 3584, and cases analyzing § 3584. However, Martinez’s federal judgment explicitly states that his federal sentence was to be concurrent with the “undischarged prison term imposed” on his state conviction. Further, because Martinez received state custody credit for the time between his two sentencings, the BOP properly excluded it when calculating Martinez’s sentence. *See* 18 U.S.C. § 3585(b); *Schleining*, 642 F.3d at 1245 n.2 (explaining that, under § 3585(b), the BOP can grant a federal prisoner credit for time spent in custody before imposition of his federal sentence only if that time has not been credited against another sentence). Under these circumstances, § 3584 and the cases Martinez cites do not apply.

We do not consider Martinez’s remaining arguments, which he made for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Martinez’s request for judicial notice is denied.

AFFIRMED.