

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

United States of America,
Plaintiff,

vs.

Case No. 11-10190-JTM

Victor Lamar Baxter, Jr.,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant's Motion for Additional Credit, which seeks additional credit toward his federal sentence for 72 days he spent in Newton County Jail from November 22, 2011, to February 1, 2012, at which time he was released from state custody to the federal detainer.

Baxter appeared before this court on November 22, 2011, pursuant to a Writ of Habeas Corpus Ad Prosequendum (Dkt. 19), and on that date changed his plea to guilty. (Dkt. 20, 21). Baxter remained in state custody pursuant to the writ until the February 1, 2012 probation revocation sentence in the state case, at which time he was sentenced to time served and released to federal custody.

Under 18 U.S.C. § 3585(b),

A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences

- (1) as a result of the offense for which the sentence was imposed; or
- (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

(Emphasis added).

Even though Baxter appeared in this court on November 22, 2011, he remained in state custody and received credit for that jail time when he was sentenced to time served in the state criminal action. Accordingly, he cannot receive credit for the same time against his federal sentence under § 3585(b).

IT IS ACCORDINGLY ORDERED this 8th day of November, 2012, that the defendant's Motion for Credit (Dkt. 36) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE