

# Appendix A

**ANTHONY ANDREWS**, Petitioner - Appellant, v. **BRYAN K. DOBBS**, Warden FCI Williamsburg,  
Respondent - Appellee.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

848 Fed. Appx. 568; 2021 U.S. App. LEXIS 15774

No. 20-7901

May 26, 2021, Decided

May 4, 2021, Submitted

**Notice:**

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.**

**Editorial Information: Subsequent History**

Motion denied by, As moot *Andrews v. Dobbs*, 2021 U.S. App. LEXIS 20196 (4th Cir., July 7, 2021) Rehearing denied by, En banc, Rehearing denied by *Andrews v. Dobbs*, 2021 U.S. App. LEXIS 23627 (4th Cir., Aug. 9, 2021) Stay denied by *Andrews v. Dobbs*, 2021 U.S. App. LEXIS 25074 (4th Cir., Aug. 20, 2021)

**Editorial Information: Prior History**

{2021 U.S. App. LEXIS 1} Appeal from the United States District Court for the District of South Carolina, at Greenville. (6:20-cv-03026-DCN). David C. Norton, District Judge. In re *Andrews*, 840 Fed. Appx. 764, 2021 U.S. App. LEXIS 8919, 2021 WL 1157934 (4th Cir., Mar. 26, 2021)

**Disposition:**

AFFIRMED.

**Counsel** Anthony Andrews, Appellant, Pro se.

**Judges:** Before KEENAN, WYNN, and QUATTLEBAUM, Circuit Judges.

**Opinion**

{848 Fed. Appx. 569} PER CURIAM:

Anthony Andrews appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition. We review de novo a district court's order denying a § 2241 petition. *Fontanez v. O'Brien*, 807 F.3d 84, 86 (4th Cir. 2015). The district court declined to address the merits of Andrews' claims because it determined that Andrews' § 2241 petition was duplicative of the matters pending in the sentencing court and on direct appeal from that court. We acknowledge the overlap between his § 2241 arguments and his direct appeal. Despite that overlap, the arguments here are not identical to those made in his direct appeal and they appear to be proper for a § 2241 claim. See *Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 206-07 & n.6 (4th Cir. 2006); *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

However, even if Andrews is correct that the district court should have addressed the merits of his petition, "we may affirm a district court's ruling on any ground apparent in the record." *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 375 (4th Cir. 2015). Andrews' arguments fail on the

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merits. He is not entitled to good-time credits on his revocation sentence because the district court sentenced him to 12 months' imprisonment.{2021 U.S. App. LEXIS 2} See 18 U.S.C. § 3624(b)(1). Under § 3624(b)(1), a prisoner is only entitled to good-time credit if he is "serving a term of imprisonment of more than 1 year." *Id.* We do not read *United States v. Haymond*, 139 S. Ct. 2369, 204 L. Ed. 2d 897 (2019) to allow Andrews to use the time he served on supervised release for his 2001 conviction as a credit for the prison sentence imposed in 2018 for new criminal conduct. See *Kidd v. Fikes*, No. 20-cv-287 (SRN/TNL), 2020 U.S. Dist. LEXIS 229274, 2020 WL 7210025, at \*3 (D. Minn. Aug. 17, 2020) (collecting cases). Therefore, we affirm the district court's order.

Last, we deny Andrews' motion to proceed by pseudonym. This issue was raised for the first time on appeal and Andrews does not offer evidence of exceptional circumstances that would justify reversing the district court on this issue.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

**AFFIRMED**

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 20-7901**

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ANTHONY ANDREWS,

Petitioner - Appellant,

v.

BRYAN K. DOBBS, Warden FCI Williamsburg,

Respondent - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Greenville. David C. Norton, District Judge. (6:20-cv-03026-DCN)

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Submitted: May 4, 2021

Decided: May 26, 2021

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Before KEENAN, WYNN, and QUATTLEBAUM, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Anthony Andrews, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Anthony Andrews appeals the district court's order denying relief on his 28 U.S.C. § 2241 petition. We review de novo a district court's order denying a § 2241 petition. *Fontanez v. O'Brien*, 807 F.3d 84, 86 (4th Cir. 2015). The district court declined to address the merits of Andrews' claims because it determined that Andrews' § 2241 petition was duplicative of the matters pending in the sentencing court and on direct appeal from that court. We acknowledge the overlap between his § 2241 arguments and his direct appeal. Despite that overlap, the arguments here are not identical to those made in his direct appeal and they appear to be proper for a § 2241 claim. *See Great Am. Ins. Co. v. Gross*, 468 F.3d 199, 206-07 & n.6 (4th Cir. 2006); *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997).

However, even if Andrews is correct that the district court should have addressed the merits of his petition, "we may affirm a district court's ruling on any ground apparent in the record." *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 375 (4th Cir. 2015). Andrews' arguments fail on the merits. He is not entitled to good-time credits on his revocation sentence because the district court sentenced him to 12 months' imprisonment. *See 18 U.S.C. § 3624(b)(1)*. Under § 3624(b)(1), a prisoner is only entitled to good-time credit if he is "serving a term of imprisonment of more than 1 year." *Id.* We do not read *United States v. Haymond*, 139 S. Ct. 2369 (2019) to allow Andrews to use the time he served on supervised release for his 2001 conviction as a credit for the prison sentence imposed in 2018 for new criminal conduct. *See Kidd v. Fikes*, No. 20-cv-287 (SRN/TNL), 2020 WL 7210025, at \*3 (D. Minn. Aug. 17, 2020) (collecting cases). Therefore, we affirm the district court's order.

Last, we deny Andrews' motion to proceed by pseudonym. This issue was raised for the first time on appeal and Andrews does not offer evidence of exceptional circumstances that would justify reversing the district court on this issue.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: May 26, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-7901  
(6:20-cv-03026-DCN)

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ANTHONY ANDREWS

Petitioner - Appellant

v.

BRYAN K. DOBBS, Warden FCI Williamsburg

Respondent - Appellee

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

## Appendix B



U.S. District Court

District of South Carolina  
Notice of Electronic Filing

The following transaction was entered on 12/10/2020 at 11:58 AM EST and filed on 12/10/2020

Case Name: Andrews v. Dobbs et al

Case Number: 6:20-cv-03026-DCN

Filer:

Document Number: 15

Docket Text:

ORDER affirming [8] Report and Recommendation, dismissing petition without requiring respondent to file a return. It is further ordered that a certificate of appealability is denied. Signed by Honorable David C Norton on 12/10/2020.(eric, )

6:20-cv-03026-DCN Notice has been electronically mailed to:

6:20-cv-03026-DCN Notice will not be electronically mailed to:

Anthony Andrews, ##15965-056  
Williamsburg Federal Correctional Institution  
Inmate Mail/Parcels  
P.O. Box 340  
Salters, SC 29590

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

|                  |   |                          |
|------------------|---|--------------------------|
| Anthony Andrews, | ) | C/A No. 6:20-cv-3026 DCN |
|                  | ) |                          |
| Petitioner,      | ) | <b><u>ORDER</u></b>      |
|                  | ) |                          |
| vs.              | ) |                          |
|                  | ) |                          |
| Bryan K. Dobbs,  | ) |                          |
|                  | ) |                          |
| Respondent.      | ) |                          |
| _____            | ) |                          |

The above referenced case is before this court upon the magistrate judge's recommendation that the petition be dismissed without requiring respondent to file a return.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v. Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984 ).<sup>1</sup> **Objections to the magistrate judge's report and recommendation were timely filed on October 10, 2020.**

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<sup>1</sup>In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED**, and the petition is **DISMISSED** without requiring respondent to file a return.

**IT IS FURTHER ORDERED** that a certificate of appealability is denied because petitioner has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(b)(2).

**AND IT IS SO ORDERED.**



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David C. Norton  
United States District Judge

December 10, 2020  
Charleston, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

U.S. District Court

District of South Carolina  
Notice of Electronic Filing

The following transaction was entered on 12/10/2020 at 3:22 PM EST and filed on 12/10/2020

Case Name: Andrews v. Dobbs et al

Case Number: 6:20-cv-03026-DCN

Filer:

WARNING: CASE CLOSED on 12/10/2020

Document Number: 16

Docket Text:

JUDGMENT that the petition is Dismissed without requiring respondent to file a return. A certificate of appealability is denied. (kmca)

6:20-cv-03026-DCN Notice has been electronically mailed to:

6:20-cv-03026-DCN Notice will not be electronically mailed to:

Anthony Andrews, ##15965-056  
Williamsburg Federal Correctional Institution  
Inmate Mail/Parcels  
P.O. Box 340  
Salters, SC 29590

AO 450 (SCD 04/2010) Judgment in a Civil Action

# UNITED STATES DISTRICT COURT

for the  
District of South Carolina

Anthony Andrews

*Petitioner*

v.

Bryan K. Dobbs, Warden FCI Williamsburg

*Respondent*

Civil Action No. 6-20-cv-3026-DCN

## JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the petitioner *(name)* \_\_\_\_\_ recover from the respondent *(name)* \_\_\_\_\_ the amount of \_\_\_\_\_ dollars (\$\_\_\_), which includes prejudgment interest at the rate of \_\_\_\_ %, plus postjudgment interest at the rate of \_\_\_\_ %, along with costs;

☐ the petitioner recover nothing, the action be dismissed on the merits, and the respondent *(name)* \_\_\_\_\_ recover costs from the petitioner *(name)* \_\_\_\_\_.

☒ other: the petition is Dismissed without requiring respondent to file a return. A certificate of appealability is denied.

This action was *(check one)*:

☐ tried by a jury, the Honorable \_\_\_\_\_ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable \_\_\_\_\_ presiding, without a jury and the above decision was reached.

☒ decided by the Honorable David C. Norton.

Date: December 10, 2020

CLERK OF COURT

s/L K McAlister, Deputy Clerk

*Signature of Clerk or Deputy Clerk*

Appendix      C

**ANTHONY ANDREWS, Petitioner - Appellant v. BRYAN K. DOBBS, Warden FCI Williamsburg,  
Respondent - Appellee  
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
2021 U.S. App. LEXIS 23627  
No. 20-7901  
August 9, 2021, Filed**

**Editorial Information: Prior History**

{2021 U.S. App. LEXIS 1}(6:20-cv-03026-DCN). Andrews v. Dobbs, 848 Fed. Appx. 568, 2021 U.S. App. LEXIS 15774, 2021 WL 2137637 (4th Cir. S.C., May 26, 2021)

**Counsel** Anthony Andrews, Petitioner - Appellant, Pro se, Coleman, FL.

**Judges:** Entered at the direction of the panel: Judge Keenan, Judge Wynn, and Judge Quattlebaum.

**Opinion**

**ORDER**

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Keenan, Judge Wynn, and Judge Quattlebaum.

Appendix D



**Other Orders/Judgments**6:20-cv-03026-DCN-KFMAndrews v. Dobbs et al

KFM-Inmate

**U.S. District Court****District of South Carolina****Notice of Electronic Filing**

The following transaction was entered on 10/1/2020 at 2:38 PM EDT and filed on 10/1/2020

**Case Name:** Andrews v. Dobbs et al**Case Number:** 6:20-cv-03026-DCN**Filer:****Document Number:** 8**Docket Text:**

**REPORT AND RECOMMENDATION re [1] Petition for Writ of Habeas Corpus filed by Anthony Andrews. It is recommended that the petitioners § 2241 petition be dismissed without requiring the respondent to file a return Objections to R&R due by 10/15/2020 Add an additional 3 days only if served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. Signed by Honorable David C Norton on 10/1/2020. (kric, )**

6:20-cv-03026-DCN Notice has been electronically mailed to:

6:20-cv-03026-DCN Notice will not be electronically mailed to:

Anthony Andrews

#15965-056

Williamsburg Federal Correctional Institution

Inmate Mail/Parcels

P.O. Box 340

Salters, SC 29590

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1091130295 [Date=10/1/2020] [FileNumber=9843584-0]  
] [abdc58d0ad020da3db2b84b0e4287a634d1d2f11b863ce2e9144bc06361aa5ecd96  
f308c77ae6962c69e2811a2f2fd28de4422f1fdb071ba3491144c2b215855]]

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Anthony Andrews,

Petitioner,

vs.

Bryan K. Dobbs,

Respondent.

C/A No. 6:20-cv-03026-DCN-KFM

**ORDER**

This is an action seeking habeas corpus relief under 28 U.S.C. § 2241 (doc. 1). The petitioner is a federal prisoner. Therefore, in the event that a limitations issue arises, the petitioner shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Civil Rule 73.02(B)(2), D.S.C., pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

**PAYMENT OF THE FILING FEE:**

The petitioner has paid the full filing fee of \$5.00 (receipt number SCX400014723).

**TO THE CLERK OF COURT:**

The Clerk of Court shall serve the 28 U.S.C. § 2241 petition and this Order on the respondent pursuant to Rule 4 of the Rules Governing Section 2254 cases. The United States Attorney for the District of South Carolina shall also receive a copy of this Order and a copy of the § 2241 petition through the Electronic Case Filing System. The Clerk of Court shall also serve the § 2241 petition and this Order by registered or certified mail to the Attorney General of the United States in compliance with Rule 4(i) of the Federal Rules of Civil Procedure. Rule 4(i) applies to habeas cases under Rule 81(a)(4)(A) of the Federal Rules of Civil Procedure to the extent that the practice in such proceedings "is not specified in a federal statute, [or] the Rules Governing Section 2254 Cases . . . ."

The Clerk of Court shall not enter any change of address submitted by the petitioner which directs that mail be sent to a person other than the petitioner unless that person is an attorney admitted to practice before this Court who has entered a formal appearance.

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\* The Rules Governing Section 2254 Cases may be applied in habeas actions filed pursuant to 28 U.S.C. § 2241. Rule 1(b) of the Rules Governing Section 2254 Cases states a "district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."

**TO THE RESPONDENT:**

The respondent shall *not* file an answer to the petition because the petition is subject to summary dismissal.

**TO THE PETITIONER:**

A Report and Recommendation is herewith being filed in which the undersigned has recommended that this petition be dismissed.

The petitioner must place the Civil Action Number (C/A No. 6:20-cv-03026-DCN-KFM) listed above on any document filed in this case. **Any future filings in this case must be sent to: 300 East Washington Street, Room 239, Greenville, South Carolina 29601.** All documents requiring the petitioner's signature shall be signed with the petitioner's full legal name written in the petitioner's own handwriting. *Pro se* litigants shall *not* use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this Court, the petitioner is directed to use letter-sized (8½ inches x 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. The petitioner is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom, and sides of each paper submitted.

The petitioner is a *pro se* litigant. The petitioner's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised **in writing (300 East Washington Street, Room 239, Greenville, South Carolina 29601)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this order.** Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket number of all pending cases you have filed with this Court. Your failure to do so will not be excused by the Court.

**IT IS SO ORDERED.**

s/Kevin F. McDonald  
United States Magistrate Judge

October 1, 2020  
Greenville, South Carolina

**The petitioner's attention is directed to the important WARNING on the following page.**

**IMPORTANT INFORMATION . . . PLEASE READ CAREFULLY  
WARNING TO PRO SE PARTY OR NONPARTY FILERS**

ALL DOCUMENTS THAT YOU FILE WITH THE COURT WILL BE AVAILABLE TO THE PUBLIC ON THE INTERNET THROUGH PACER (PUBLIC ACCESS TO COURT ELECTRONIC RECORDS) AND THE COURT'S ELECTRONIC CASE FILING SYSTEM. **CERTAIN PERSONAL IDENTIFYING INFORMATION SHOULD NOT BE INCLUDED IN, OR SHOULD BE REMOVED FROM, ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

**1. Personal information protected by Rule 5.2(a):**

**(a) Social Security and Taxpayer identification numbers.** If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.

**(b) Names of Minor Children.** If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.

**(c) Dates of Birth.** If an individual's date of birth must be included in a document, the filer may include only the year of birth.

**(d) Financial Account Numbers.** If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

**2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d) (filings made under seal) and (e) (protective orders).**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

|                  |   |  |
|------------------|---|--|
| Anthony Andrews, | ) | C/A No. 6:20-cv-03026-DCN-KFM            |
|                  | ) |  |
| Petitioner,      | ) | <b><u>REPORT OF MAGISTRATE JUDGE</u></b> |
|                  | ) |  |
| vs.              | ) |  |
|                  | ) |  |
| Bryan K. Dobbs,  | ) |  |
|                  | ) |  |
| Respondent.      | ) |  |

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The petitioner, proceeding *pro se*, brings this action pursuant to 28 U.S.C. § 2241 for habeas relief. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the undersigned is authorized to review such petitions for relief and submit findings and recommendations to the District Court.

The petitioner's § 2241 petition was entered on the docket on August 21, 2020 (doc. 1). The case is in proper form for judicial screening. Nevertheless, for the reasons set forth below, it is recommended that the petitioner's § 2241 petition be dismissed without prejudice and without requiring the respondent to file an answer or return.

**BACKGROUND**

**Petitioner's Conviction and Sentence**

On June 12, 2001, the petitioner pled guilty in the United States District Court for the Eastern District of North Carolina to distribution of crack cocaine.<sup>1</sup> See *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at doc. 21 (E.D.N.C.). On November 5,

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<sup>1</sup> The court takes judicial notice of the records in the petitioner's criminal case in the Eastern District of North Carolina at case number 7:01-cr-00027-BO-1 as well as collateral attacks on his sentence filed in the United States District Court for the Eastern District of North Carolina, as well as several pending actions in the Fourth Circuit Court of Appeals. See *Phillips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts "may properly take judicial notice of matters of public record."); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'").

2001, the Honorable James C. Fox, United States District Judge, sentenced the petitioner to a term of 188 months' imprisonment followed by five years of supervised release, a special assessment of \$100.00, and a fine of \$9,700.00 without interest. *Id.* at doc. 29.

The petitioner filed his first motion pursuant to § 2255 on March 22, 2002. *Id.* at doc. 31. A portion of the motion was dismissed on April 15, 2002. *Id.* at doc. 32. The petitioner amended the motion on several occasions, and following multiple evidentiary hearings, the petitioner's motion to withdraw and abandon all claims filed pursuant to § 2255 was granted on March 5, 2003. *Id.* at doc. 89.

After filing various motions seeking a sentence reduction under Rule 35 of the Federal Rules of Criminal Procedure, the petitioner sought a sentence reduction based upon 18 U.S.C. § 3582(c)(2) and a motion to discontinue sentence. *Id.* at docs. 149; 150; 152; 159; 167; 168; 172; 173; 175. As a result of these motions, the petitioner's sentence was reduced to 162 months' imprisonment to be followed by 5 years' supervised release, and several of the petitioner's motions were voluntarily dismissed. *Id.* at docs. 179; 180.

On December 28, 2015, the petitioner moved for early termination of his supervised release, which was denied on February 18, 2016. *Id.* at docs. 193; 197. A motion to revoke the petitioner's supervised release was filed two months later, based upon an indictment entered on March 15, 2016, in the Eastern District of North Carolina to which the petitioner later pled guilty on October 11, 2016.<sup>2</sup> *Id.* at docs. 199; 202; 218. At a hearing held on October 25, 2016, the petitioner admitted to violating the terms of his supervised release, with the sentencing to be held at a later date. *Id.* at doc. 220.

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<sup>2</sup> In that case, the petitioner was charged with conspiracy to manufacture, distribute, dispense, and possess with the intent to distribute a quantity of endocet, methadone, oxycodone, oxycontin, and oxymorphone. *United States v. Andrews*, C/A No. 7:16-cr-00030-D-3 (E.D.N.C.). As noted, the petitioner pled guilty on October 11, 2016, and was sentenced to 132 months' imprisonment to be followed by three years supervised release, and special assessment of \$100.00. *Id.* at docs. 184; 383; 465; 469.

On March 28, 2018, the petitioner filed another motion pursuant to § 2255. *Id.* at doc. 237. The motion was denied on September 28, 2018, as successive. *Id.* at doc. 247. The petitioner's appeal of the denial was dismissed, rehearing *en banc* was denied, and the United States Supreme Court denied the petition for writ of certiorari as well as the petition for rehearing. *United States v. Andrews*, 759 F. App'x 197 (4th Cir. 2019) (mem.), *cert. denied* 140 S.Ct. 669 (2019), *petition for reh'g denied* 140 S.Ct. 1255 (2020).

During this same time, on January 2, 2019, the petitioner filed another motion to reduce sentence based upon the First Step Act as well as a motion to terminate his pending supervised release violation. *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at docs. 260; 265. Both motions sought recalculation of the plaintiff's sentence. *Id.* at docs. 260; 265. The petitioner filed another motion pursuant to the First Step Act on August 2, 2019. *Id.* at doc. 306. A hearing on the motions was held on August 9, 2019, at which the petitioner appeared, represented by counsel. *Id.* at docs. 309; 310. At the conclusion of the hearing, the Honorable Terrence W. Boyle, Chief United States District Judge, orally denied the petitioner's motions. *Id.* at docs. 309; 310. The petitioner appealed, and his appeal remains pending at this time. *United States v. Andrews*, C/A No. 19-7175 (4th Cir.).

On August 14, 2019, the sentencing for the petitioner's supervised release violation took place, and the petitioner was sentenced to 12 months' imprisonment for violating his supervised release. *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at doc. 314. The petitioner appealed the revocation sentence, and that appeal remains pending at this time. *United States v. Andrews*, C/A No. 19-4592 (4th Cir.).

On September 30, 2019, the petitioner filed a motion to vacate and for a hearing on his § 2255 motion that was previously denied on September 28, 2018. *Id.* at doc. 334. The motion was denied (along with various other motions filed by the petitioner in the interim) on January 15, 2020. *Id.* at doc. 354. The petitioner filed two notices of

appeal for that order, and the appeals remain pending at this time. *United States v. Andrews*, C/A Nos. 20-6135; 20-6166 (4th Cir.).

On March 31, 2020, the petitioner filed a motion to reduce sentence. *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at doc. 390. The petitioner then filed a motion for compassionate relief on May 22, 2020. *Id.* at doc. 401. These motions remain pending in the sentencing court at this time.

### **Petitioner's Present Action**

Here, it appears the petitioner seeks recalculation of his sentence, arguing that the time he spent on supervised release (approximately 46 months) should be credited towards his current sentence pursuant to *United States v. Haymond*, 139 S.Ct. 2369 (2019) (doc. 1 at 8–9). For relief, the petitioner seeks 46 months credit to his current terms of imprisonment (*id.* at 9).

### **STANDARD OF REVIEW**

The undersigned has reviewed the petition pursuant to the Rules Governing Section 2254 Cases in the United States District Courts; the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214; and other habeas corpus statutes. As a *pro se* litigant, the petitioner's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89 (2007) (*per curiam*). The mandated liberal construction means that if the court can reasonably read the pleadings to state a valid claim on which the petitioner could prevail, it should do so. However, the requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).



### DISCUSSION

The petitioner filed this action pursuant to 28 U.S.C. § 2241 (doc. 1). Because the petitioner is incarcerated in the District of South Carolina and he names the warden of FCI Williamsburg as the respondent, his § 2241 petition is properly filed in this Court. Liberally construing the petitioner's allegations, the petitioner seeks recalculation of his federal sentence via the present § 2241 action (doc. 1).

As noted above, the petitioner has previously filed motions in the sentencing court requesting recalculation of his sentence. See *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at docs. 260; 265. The motions were denied on August 9, 2019. *Id.* at docs. 309; 310. The petitioner appealed, and his appeal (which has been consolidated with several other appeals filed by the petitioner) remains pending. *United States v. Andrews*, C/A No. 19-7175 (4th Cir.). Efficient judicial administration generally requires the federal courts to avoid duplicative federal legislation. See *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Generally, a case pending in federal court “may be dismissed for reasons of wise judicial administration whenever it is duplicative of a parallel action already pending in another federal court.” *Nexsen Pruet, LLC v. Westport Ins. Corp.*, C/A No. 3:10-cv-00895-JFA, 2010 WL 3169378, at \*2 (D.S.C. Aug. 5, 2010) (internal quotation marks omitted) (*quoting Motley Rice, LLC v. Baldwin & Baldwin, LLP*, 518 F. Supp. 2d 688, 697 (D.S.C. 2007)). Suits are considered parallel if “substantially the same parties litigate substantially the same issues in different forums.” *New Beckley Mining Corp. v. Int’l Union, United Mine Workers of Am.*, 946 F.2d 1072, 1073 (4th Cir. 1991) (*citing LaDuke v. Burlington N. R.R.*, 879 F.2d 1556, 1559 (7th Cir. 1989)). As noted above, in the sentencing court, the petitioner has filed motions seeking recalculation of his sentence, including a request for 46 months’ credit based upon time the petitioner was on supervised release, and the petitioners’ appeal of the denial of those motions remains pending. *United States v. Andrews*, C/A No. 7:01-cr-00027-BO-1, at docs. 260; 265; 309; 310; *United States*

*v. Andrews*, C/A No. 19-7175 (4th Cir.). Here, the petitioner again seeks recalculation of his sentence, arguing that he is due credit towards his current incarceration in the amount of 46 months he served on supervised release (*see generally* doc. 1). Thus, the undersigned recommends summarily dismissing the instant petition as duplicative of matters pending in the sentencing court, as outlined above.

**RECOMMENDATION**

Accordingly, it is recommended that the petitioner's § 2241 petition be dismissed without requiring the respondent to file a return.<sup>3</sup> ***The attention of the parties is directed to the important notice on the next page.***

**IT IS SO RECOMMENDED.**

s/Kevin F. McDonald  
United States Magistrate Judge

October 1, 2020  
Greenville, South Carolina

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<sup>3</sup> The petitioner cannot cure the deficiencies noted herein relative to the § 2255 savings clause, however, dismissal without prejudice is recommended because the Court of Appeals has held that dismissals for lack of subject-matter jurisdiction must be without prejudice. *S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013).

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
300 East Washington Street, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Appendix      E

AO 245B (Rev. 3/95) Sheet 1 - Judgment in a Criminal Case

**United States District Court****Eastern District of North Carolina -Southern Division**

UNITED STATES OF AMERICA

v.

**Anthony Andrews****JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **7:01CR00027-001****Samuel J. Randall, IV**

Defendant's Attorney

**THE DEFENDANT:**☒ pleaded guilty to count(s) 3☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

| <u>Title &amp; Section</u> | <u>Nature of Offense</u>             | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|----------------------------|--------------------------------------|-------------------------------|------------------------|
| 21 U.S.C. § 841 (a)(1)     | distribution of cocaine base (crack) | 11/01/2000                    | 3                      |

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☒ Count(s) 1 and 2 are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 15965-056

Defendant's Residence Address:

29 Lynn RoadLumberton NC 28358

Defendant's Mailing Address:

29 Lynn RoadLumberton NC 2835811/05/2001

Date of Imposition of Judgment

Signature of Judicial Officer

**JAMES C. FOX****UNITED STATES DISTRICT JUDGE**

Name &amp; Title of Judicial Officer

11/5/01

Date

AO 245B (Rev. 3/95) Sheet 2 - Imprisonment

Judgment Page 2 of 6

DEFENDANT: Anthony Andrews  
CASE NUMBER: 7:01CR00027-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 188 month(s).

This sentence shall run at the expiration of any sentence imposed on the motion for revocation in Case No. 7:95CR76-1H.

☒ The court makes the following recommendations to the Bureau of Prisons:  
The court recommends that the defendant receive substance abuse treatment while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

DEFENDANT: Anthony Andrews  
CASE NUMBER: 7:01CR00027-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 year(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Anthony Andrews

CASE NUMBER: 7:01CR00027-001

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

While under supervision in the Eastern District of NC, the defendant shall participate in the DROPS Program and, in response to detected illegal drug use, shall be confined in the custody of the Bureau of prisons for a period not to exceed 30 days of intermittent confinement, as arranged by the probation office, in the following increments; First Use - Two Days; Second Use - Five Days; Third Use - Ten Days



DEFENDANT: Anthony Andrews

CASE NUMBER: 7:01CR00027-001

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

|         | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|---------|-------------------|-------------|--------------------|
| Totals: | \$ 100.00         | \$ 9,700.00 | \$                 |

☐ If applicable, restitution amount ordered pursuant to plea agreement ..... \$ \_\_\_\_\_

**FINE**

The above fine includes costs of incarceration and/or supervision in the amount of \$ \_\_\_\_\_.

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☒ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

**RESTITUTION**

- ☐ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until \_\_\_\_\_. An Amended Judgment in a Criminal Case will be entered after such determination.

- ☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| <u>Name of Payee</u> | <u>** Total<br/>Amount of Loss</u> | <u>Amount of<br/>Restitution Ordered</u> | <u>Priority Order<br/>or Percentage<br/>of Payment</u> |
|----------------------|------------------------------------|--|--|
|----------------------|------------------------------------|--|--|

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

AO 245B (Rev. 3/85) Sheet 5, Part B - Criminal Monetary Penalties

Judgment-Page 6 of 6

DEFENDANT: Anthony Andrews

CASE NUMBER: 7:01CR00027-001

**SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A ☐ See special instructions below
- B ☒ \$ 9,800.00 immediately, balance due (in accordance with C, D, or E); or
- C ☐ not later than \_\_\_\_\_; or
- D ☐ in installments to commence \_\_\_\_\_ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E ☐ in \_\_\_\_\_ (e.g. equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ year(s) to commence \_\_\_\_\_ day(s) after the date of this judgment.

\* The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the Clerk, U.S. District Court, Attn: Financial Unit, Post Office Box 25870, Raleigh, NC 27611, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

## Appendix F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
DOCKET NO. 7:01-CR-27-IBO

United States Of America

vs.

Anthony Andrews

JUDGMENT

On November 5, 2001, Anthony Andrews appeared before the Honorable James C. Fox, Senior U.S. District Judge in the Eastern District of North Carolina, and upon an earlier plea of guilty to Distribution of Cocaine Base (Crack), 21 U.S.C. § 841(a)(1) was sentenced to the custody of the Bureau of Prisons for a term of 188 months. Additionally, it was ordered by the court that the defendant be placed on supervised release for 60 months upon release from imprisonment. On May 5, 2009, based on a Motion for Sentence Reduction pursuant to 18 U.S.C. § 3582(c)(2), the imprisonment term was reduced from 188 months to 162 months. Anthony Andrews was released from custody and the term of supervised release commenced on June 6, 2012.

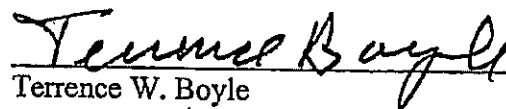
From evidence presented at the revocation hearing on August 9, 2019, the court finds as a fact that Anthony Andrews, who is appearing before the court with counsel, has violated the terms and conditions of the judgment as follows:

1. Criminal conduct.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that the supervised release term heretofore granted be revoked, and the defendant is ordered committed to the custody of the Bureau of Prisons or its authorized representative for imprisonment for a period of 12 months.

**IT IS FURTHER ORDERED** that the Clerk provide the U.S. Marshal a copy of this Judgment and same shall serve as the commitment herein.

This the 9th day of August, 2019.

  
Terrence W. Boyle  
Chief U.S. District Judge

## Appendix G

## UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

ANTHONY ANDREWS

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:16-CR-30-3-D

USM Number: 15965-056

Thomas R. Wilson

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section                           | Nature of Offense  | Offense Ended | Count |
|---|--|---------------|-------|
| 21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(C) | Conspiracy to Manufacture, Distribute, Dispense, and Possess With Intent to Distribute a Quantity of Endocet, Methadone, Oxycodone, Oxycontin, and Oxymorphone | 3/16/2016     | 1     |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) \_\_\_\_\_☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/15/2018

Date of Imposition of Judgment

Signature of Judge

James C. Dever III, United States District Judge

Name and Title of Judge

11/15/2018

Date

DEFENDANT: ANTHONY ANDREWS  
CASE NUMBER: 7:16-CR-30-3-D

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Count 1: 132 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that he be housed separately from all co-defendants, to include: Donovan Dave Dixon, Demetrus Locklear, John Feeney, Mark Bartolotti, and Franklin Harrelson.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ANTHONY ANDREWS

CASE NUMBER: 7:16-CR-30-3-D

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

Count 1: 3 years

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.



DEFENDANT: ANTHONY ANDREWS  
CASE NUMBER: 7:16-CR-30-3-D**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: ANTHONY ANDREWS  
CASE NUMBER: 7:16-CR-30-3-D

**ADDITIONAL STANDARD CONDITIONS OF SUPERVISION**

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall support his defendant(s).

DEFENDANT: ANTHONY ANDREWS  
CASE NUMBER: 7:16-CR-30-3-D

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

|        | <u>Assessment</u> | <u>JVTA Assessment*</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|-------------------------|-------------|--------------------|
| TOTALS | \$ 100.00         | \$                      | \$          | \$                 |

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss**</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|---------------------|----------------------------|-------------------------------|
|----------------------|---------------------|----------------------------|-------------------------------|

|        |         |         |  |
|--------|---------|---------|--|
| TOTALS | \$ 0.00 | \$ 0.00 |  |
|--------|---------|---------|--|

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ANTHONY ANDREWS  
CASE NUMBER: 7:16-CR-30-3-D

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A. ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B. ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C. ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D. ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. ☒ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of \$100.00 shall be due in full immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:  
The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order and Judgment of Forfeiture entered on November 15, 2018.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

# Appendix      H

COLJJ 540\*23 \*  
PAGE 001 \*

SENTENCE MONITORING  
COMPUTATION DATA  
AS OF 08-18-2021

\* 08-18-2021  
\* 09:34:18

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

FBI NO.....: 355348FA5                      DATE OF BIRTH: 08-16-1965    AGE: 56  
ARS1.....: COL/A-DES  
UNIT.....: C-4                              QUARTERS.....: C15-902L  
DETAINERS.....: NO                            NOTIFICATIONS: NO

HOME DETENTION ELIGIBILITY DATE: 01-17-2026

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.  
THE INMATE IS PROJECTED FOR RELEASE: 07-17-2026 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 040 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT  
DOCKET NUMBER.....: 7:16-CR-30-3-D  
JUDGE.....: DEVER  
DATE SENTENCED/PROBATION IMPOSED: 11-15-2018  
DATE COMMITTED.....: 06-28-2019  
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT  
PROBATION IMPOSED.....: NO

|                  | FELONY ASSESS | MISDMNR ASSESS | FINES   | COSTS   |
|------------------|---------------|----------------|---------|---------|
| NON-COMMITTED..: | \$100.00      | \$00.00        | \$00.00 | \$00.00 |

RESTITUTION...: PROPERTY: NO SERVICES: NO                      AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 391                      21:846 SEC 841-851 ATTEMPT  
OFF/CHG: 21:846, 21:841(B) (1) (C) CONSPIRACY TO MANUFACTURE, DISTRIBUTE,  
DISPENSE, AND POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF  
ENDOCET, METHADONE, OXYCODONE, OXYCONTIN, AND OXYMORPHONE

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE  
SENTENCE IMPOSED/TIME TO SERVE.: 132 MONTHS  
TERM OF SUPERVISION.....: 3 YEARS  
DATE OF OFFENSE.....: 03-16-2016

-----CURRENT JUDGMENT/WARRANT NO: 050 -----

COURT OF JURISDICTION.....: NORTH CAROLINA, EASTERN DISTRICT  
DOCKET NUMBER.....: 7:01-CR-27-1BO  
JUDGE.....: BOYLE

G0002                      MORE PAGES TO FOLLOW . . .

COLJJ .540\*23 \*  
PAGE 002 \*

SENTENCE MONITORING  
COMPUTATION DATA  
AS OF 08-18-2021

\* 08-18-2021  
\* 09:34:18

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

DATE SENTENCED/PROBATION IMPOSED: 11-05-2001  
DATE SUPERVISION REVOKED.....: 08-09-2019  
TYPE OF SUPERVISION REVOKED.....: REG  
DATE COMMITTED.....: 09-20-2019  
HOW COMMITTED.....: COMMIT OF SUPERVISED REL VIOL  
PROBATION IMPOSED.....: NO

|                  | FELONY ASSESS | MISDMNR ASSESS | FINES      | COSTS   |
|------------------|---------------|----------------|------------|---------|
| NON-COMMITTED..: | \$100.00      | .\$00.00       | \$9,700.00 | \$00.00 |

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----  
OFFENSE CODE....: 409 21:841 & 846 SEC 841-851  
OFF/CHG: 21:841(A)91) DISTRIBUTION OF COCAINE BASE (CRACK)

SENTENCE PROCEDURE.....: SUPERVISED RELEASE VIOLATION PLRA  
SENTENCE IMPOSED/TIME TO SERVE.: 12 MONTHS  
RELATIONSHIP OF THIS OBLIGATION  
TO OTHERS FOR THE OFFENDER....: CS 040/010/040  
DATE OF OFFENSE.....: 11-01-2000

-----CURRENT COMPUTATION NO: 040 -----

COMPUTATION 040 WAS LAST UPDATED ON 09-10-2019 AT DSC AUTOMATICALLY  
COMPUTATION CERTIFIED ON 09-11-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN  
CURRENT COMPUTATION 040: 040 010, 050 010

G0002 MORE PAGES TO FOLLOW . . .

COLJJ 540\*23 \*  
PAGE 003 OF 003 \*

SENTENCE MONITORING  
COMPUTATION DATA  
AS OF 08-18-2021

\* 08-18-2021  
\* 09:34:18

REGNO...: 15965-056 NAME: ANDREWS, ANTHONY

DATE COMPUTATION BEGAN.....: 11-15-2018  
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA  
TOTAL TERM IN EFFECT.....: 144 MONTHS  
TOTAL TERM IN EFFECT CONVERTED...: 12 YEARS  
AGGREGATED TERM OF SUPERVISION...: 3 YEARS  
EARLIEST DATE OF OFFENSE.....: 11-01-2000

JAIL CREDIT.....: FROM DATE THRU DATE  
04-26-2016 11-14-2018

TOTAL PRIOR CREDIT TIME.....: 933  
TOTAL INOPERATIVE TIME.....: 0  
TOTAL GCT EARNED AND PROJECTED...: 648  
TOTAL GCT EARNED.....: 270  
STATUTORY RELEASE DATE PROJECTED: 07-17-2026  
ELDERLY OFFENDER TWO THIRDS DATE: 04-26-2024  
EXPIRATION FULL TERM DATE.....: 04-25-2028  
TIME SERVED.....: 5 YEARS 3 MONTHS 24 DAYS  
PERCENTAGE OF FULL TERM SERVED...: 44.2  
PERCENT OF STATUTORY TERM SERVED: 51.9

PROJECTED SATISFACTION DATE.....: 07-17-2026  
PROJECTED SATISFACTION METHOD....: GCT REL

REMARKS.....: 07-17-19:COMP ENTRD/CASE NO 7:01CR27-1 HAS BEEN APPEALED C/SIG  
09-10-19:CS COMP ENTRD/SJW 050 C/SIG.

G0000 TRANSACTION SUCCESSFULLY COMPLETED



### **3584. Multiple sentences of imprisonment**

**(a) Imposition of concurrent or consecutive terms.** If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

**(b) Factors to be considered in imposing concurrent or consecutive terms.** The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a) [18 USCS § 3553(a)].

**(c) Treatment of multiple sentence as an aggregate.** Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

#### **HISTORY:**

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 2000.

## **§ 3585. Calculation of a term of imprisonment**

(a) **Commencement of sentence.** A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) **Credit for prior custody.** 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.

### **HISTORY:**

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 2001.

## Appendix I

Administrative Remedy No. 998349-A1  
Part B - Response

This is in response to your Central Office Administrative Remedy Appeal, wherein you contend, your 5-year Supervised Release Term from your original sentence on Case Number 7:01CR00027-001, is official detention, and you are eligible for 46 months of additional credit from June 5, 2012, through April 26, 2016, towards your current sentence. In addition, you claim you are entitled to an additional 7 days of Good Conduct Time (GCT) credit from a Supervised Release Term Revocation of Case Number 7:01CR00027-001, that was aggregated with your current sentence on Case Number 7:16-CR-30-3-D.

A review of your records revealed on November 5, 2001, the United States District Court for the Eastern District of North Carolina sentenced you to a 188-month term of imprisonment for Distribution of Cocaine Base (Crack), Case Numbers 7:01CR00027-001. On December 12, 2001, the United States District Court for the Eastern District of North Carolina sentenced you to a 51-month term of imprisonment on a Supervised Release Term of Case Number 7:95CR00076-001. Six (6) months of the sentence was imposed to run consecutive, and the remaining 45 months was imposed to run concurrent. On May 5, 2009, your 188-month sentence was reduced to 162 months. On June 6, 2012, you satisfied your obligation to this sentence, and you were released to a 5-year Supervised Release Term.

In accordance with Program Statement 5880.28, Sentence Computation Manual (CCCA of 1984), in Reno v. Koray, the U.S. Supreme Court held that time spent under restrictive conditions of release (including time spent in a community treatment center (CCC) or similar facility) was not official detention entitling an inmate to prior custody time credit under 18 U.S.C. § 3585(b). The court found that the interaction of the Bail Reform Act and 18 U.S.C. § 3585(b) supported the Bureau of Prisons' interpretation that a defendant is either released (with no credit for time under conditions of release) or detained (with credit for time in official detention). Therefore, you are not entitled to the 46 months of credit you claim from June 5, 2012, through April 26, 2016.

On November 15, 2018, the United States District Court for the Eastern District of North Carolina sentenced you to a 132-month term of imprisonment for a Conspiracy to Manufacture, Distribute, and Possess with Intent to Distribute a Quantity of Endocet, Methadone, Oxycodone, Oxycontin, and Oxymorphone, on Case Number 7-16-CR-30-3-D. In addition, on August 9, 2019, you were also sentenced to a 12-month term of imprisonment for a Supervised Release Term Violation on Case Number 7:01-CR-27-1B0. The terms were aggregated, for a total of 144 months.

Administrative Remedy No. 998349-A1  
Part B - Response  
Page 2

The BOP uses Title 18, USC § 3624(b) to determine good conduct time credit on a federal sentence. Updates to Title 18, USC § 3624(b) took effect on July 19, 2019. The updates state in part, "a prisoner who is serving a term of imprisonment of more than 1 year...may receive credit toward the service of the prisoner's sentence, of up to 54 days for each year of the prisoner's sentence imposed by the court." It also states "If the Bureau determines that during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate." Your sentence imposed on August 9, 2019, for Case Number 7:01-CR-27-1BO, for 12 months only, and does not earn any Good Conduct Time.

Your federal sentence was calculated to begin on November 15, 2018 (the date of imposition). Prior custody credit was applied from April 26, 2016, through November 14, 2018. Your Projected Release Date is June 17, 2026.

The Bureau strives to administer sentences in accordance with federal statute, Bureau policy, and to achieve the intent of the federal sentencing Court. Your sentence has been computed as directed by federal statute and the intent of the Court, and Bureau of Prisons Program Statement 5880.28, Sentence Computation Manual (CCCA of 1984).

Accordingly, your appeal is denied.

7/17/20  
Date

Te  
Ian Connors, Administrator  
National Inmate Appeals *TPB*

**Larone F. Elijah, Petitioner, vs. Bryan K. Dobbs, Respondent.**  
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, BEAUFORT**  
**DIVISION**

2021 U.S. Dist. LEXIS 158767  
Case No.: 9:20-cv-03040-JD-MHC  
August 23, 2021, Decided  
August 23, 2021, Filed

**Editorial Information: Prior History**

Elijah v. Dobbs, 2021 U.S. Dist. LEXIS 159861 (D.S.C., July 29, 2021)

**Counsel** {2021 U.S. Dist. LEXIS 1}Larone F. Elijah, Petitioner, Pro se,  
COLEMAN, FL.

For Bryan K. Dobbs, Warden, Respondent: Marshall Prince,  
LEAD ATTORNEY, US Attorneys Office, Columbia, SC.

**Judges:** Joseph Dawson, III, United States District Judge.

**Opinion**

**Opinion by:** Joseph Dawson, III

**Opinion**

**ORDER & OPINION**

This matter is before the Court with the Report and Recommendation ("Report and Recommendation" or "Report") of United States Magistrate Judge Molly H. Cherry made in accordance with § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) of the District of South Carolina.<sup>1</sup> Larone F. Elijah ("Petitioner" or "Elijah"), a federal inmate incarcerated at the Federal Correctional Institution ("FCI") Williamsburg and proceeding pro se, petitioned the Court for a writ of habeas corpus under 28 U.S.C. § 2241 against Bryan K. Dobbs ("Respondent" or "Dobbs") arising out of Elijah's violation of supervised release and new criminal charges stemming from the same violation.<sup>2</sup>

Elijah filed the present petition contending that: 1) the BOP erred in failing to credit him for the fourteen months he spent on Supervised Release in case number 7:07-CR-10-1-D.; 2) the BOP incorrectly found that he could not be awarded additional Good Conduct Time ("GCT") credit under the First Step Act ("FSA") for his original 108-month term of confinement{2021 U.S. Dist. LEXIS 2} in case number 7:07-CR-10-1-D; and 3) 18 U.S.C. § 3583(e)(3) is unconstitutional pursuant to United States v. Haymond, 139 S. Ct. 2369, 204 L. Ed. 2d 897 (2019). (DE 18, p. 5-6.) Dobbs filed the present motion for summary judgment seeking to dismiss Elijah's petition because Elijah is not entitled to any credit for time spent on Supervised Release and he is not entitled to additional GCT credit under the FSA. The Report recommends granting Dobbs' motion for summary judgement because the BOP correctly calculated Elijah's credit and GCT, and Haymond did not invalidate 18 U.S.C. § 3583(e)(3). For the following reasons, the Court adopts the Report.

DISHOT

Although **Elijah** raises several objections, to be actionable, objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). "The Supreme Court has expressly upheld the validity of such a waiver rule, explaining that 'the filing of objections to a magistrate's report enables the district judge to focus attention on those issues -- factual and legal -- *that are at the heart of the parties' dispute*.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (2005) (citing Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985) (emphasis added)). In the absence of specific objections{2021 U.S. Dist. LEXIS 3} to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the Court finds that **Elijah** made three objections; however, each objection is nonspecific.<sup>3</sup> Accordingly, after a thorough review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation (DE 18) and incorporates it herein, and grants **Dobbs'** motion for summary judgement.

It is therefore **ORDERED** that Defendant's motion for summary judgment (DE 8) is granted; and therefore, Plaintiff's Complaint is dismissed. Further, it is **ORDERED** that a certificate of appealability is denied because Defendant has failed to make "a substantial showing of the denial of a constitutional{2021 U.S. Dist. LEXIS 4} right." 28 U.S.C. § 2253(c)(2).

/s/ Joseph Dawson, III

Joseph Dawson, III

United States District Judge

**IT IS SO ORDERED.**

Beaufort, South Carolina

August 23, 2021

#### Footnotes

1

The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71, 96 S. Ct. 549, 46 L. Ed. 2d 483 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

2

On October 25, 2007, Elijah was sentenced in the United States District Court for the Eastern District of North Carolina, case number 7:07-CR-10-1-D, to a 108-month term of confinement and a five-year term of Supervised Release for drug relate offenses. (DE 18, p. 1.) After Elijah satisfied the 108-month term of confinement on May 23, 2014, he was released from the Federal Bureau of Prisons' ("BOP") custody and began his five-year term of Supervised Release. However, on July 10,

DISHOT

2

2015, Elijah was arrested by federal authorities for a second set of drug charges, and on March 7, 2017, was sentenced in the United States District Court for the Eastern District of North Carolina, on case number 4:15-CR-70-1-D, to a second 108-month term of confinement. (DE 18, p. 2.)

Additionally, during the interim period between Elijah's second sentence and second arrest, Elijah's Supervised Release term in his first case number 7:07-CR-10-1-D was revoked on August 17, 2015, for his second set of drug offenses, and he was sentenced to a thirty-six-month term of confinement for the Supervised Release violation. (DE 18, p. 2.)

3

First, Elijah objects to the Report contending he was in official detention for fourteen months while on Supervised release and he claims *United States v. Haymond* requires his 14 months of supervised release time be calculated as "official detention". However, Elijah offers no specifics as to how the case applies here. (DE 20, pp. 1-2.) Second, Elijah objects to the Report contending he is entitled to additional GCT credit because his original sentence and subsequent revocation in case number 7:07-CR-10-1-D should be combined and considered one sentence. (DE 20, pp. 2-3.) Lastly, Elijah objects to the Report contending *Haymond* invalidates 18 U.S.C. 3583(e)(3). (DE 20, p. 3.) As the Report has addressed all of Elijah's objections, the Court finds these objections to be nonspecific because Elijah is attempting to reargue his case. *See Nichols v. Colvin*, 100 F. Supp. 3d 487, 497 (E.D. Va. 2015) ("Likewise, a mere restatement of the arguments raised in the summary judgment filings does not constitute an 'objection' for the purposes of district court review.")



**Larone F. Elijah, Petitioner, v. Bryan K. Dobbs, Respondent.**  
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA**  
**2021 U.S. Dist. LEXIS 159861**  
**CA No. 9:20-cv-03040-JD-MHC**  
**July 29, 2021, Decided**  
**July 29, 2021, Filed**

**Editorial Information: Subsequent History**

Adopted by, Summary judgment granted by, Writ of habeas corpus dismissed, Certificate of appealability denied Elijah v. Dobbs, 2021 U.S. Dist. LEXIS 158767 (D.S.C., Aug. 23, 2021)

**Editorial Information: Prior History**

United States v. Elijah, 2009 U.S. Dist. LEXIS 133060, 2009 WL 9422663 (E.D.N.C., May 22, 2009)

**Counsel** {2021 U.S. Dist. LEXIS 1}Larone F. Elijah, Petitioner, Pro se,  
COLEMAN, FL.

For Bryan K. Dobbs, Warden, Respondent: Marshall Prince,  
LEAD ATTORNEY, US Attorneys Office, Columbia, SC.

**Judges:** Molly H. Cherry, United States Magistrate Judge.

**Opinion**

**Opinion by:** Molly H. Cherry

**Opinion**

**REPORT AND RECOMMENDATION**

Petitioner Larone F. Elijah ("Petitioner"), a federal inmate incarcerated at the Federal Correctional Institution ("FCI") Williamsburg, petitions the Court pro se for a writ of habeas corpus under 28 U.S.C. § 2241. Respondent Bryan K. Dobbs ("Respondent") filed a Motion for Summary Judgment, ECF No. 8, and Petitioner filed a Response in Opposition, ECF No. 12. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), this matter was referred to the undersigned for a Report and Recommendation.

**I. BACKGROUND**

On October 25, 2007, Petitioner was sentenced in the United States District Court for the Eastern District of North Carolina, case number 7:07-CR-10-1-D, to a 108-month term of confinement and a five-year term of Supervised Release for Possession with Intent to Distribute more than five grams of Cocaine Base, a Quantity of Cocaine, a Quantity of Heroin, and a Quantity of Methylenedioxymethamphetamine. ECF No. 8-1 at 5-8.

Petitioner satisfied the 108-month term of confinement on May 23, 2014,{2021 U.S. Dist. LEXIS 2}

DISHOT

and was released from the Federal Bureau of Prisons' ("BOP") custody. ECF No. 8-1 at 2, ¶ 7. His five-year term of Supervised Release commenced on May 23, 2014. ECF No. 8-1 at 2, ¶ 8.

On June 11, 2015, Petitioner was arrested by state authorities in Pitt County, North Carolina, for state offenses related to case number 4:15-CR-70-1-D, in the United States District Court for the Eastern District of North Carolina. ECF No. 8-1 at 2, ¶ 9. He was released by the state, via bond, on June 18, 2015. ECF No. 8-1 at 2, ¶ 9. The state charges were ultimately dismissed, but the federal charges in case number 4:15-CR-70-1-D remained pending.

Petitioner was arrested by federal authorities on July 10, 2015. ECF No. 8-1 at 2, ¶ 10; ECF No. 8-1 at 18. On August 17, 2015, Petitioner's Supervised Release term in case number 7:07-CR-10-1-D was revoked for his criminal conduct, and he was sentenced to a thirty-six-month term of confinement for the Supervised Release violation. ECF No. 8-1 at 21.

On March 7, 2017, Petitioner was sentenced in the United States District Court for the Eastern District of North Carolina, case number 4:15-CR-70-1-D, to a 108-month term of confinement for Possession with Intent{2021 U.S. Dist. LEXIS 3} to Distribute a Quantity of Cocaine, a Quantity of Heroin, and a Quantity of 3,4-Methylenedioxy-N-ethylcathinone. ECF No. 8-1 at 2, ¶ 12. The sentencing court ordered the 108-month term to be served consecutive to any other sentence. ECF No. 8-1 at 23-25.

The BOP computed Petitioner's sentences for the Supervised Release violation in case number 7:07-CR-10-1-D (thirty-six-month term) and the drug conviction in case number 4:15-CR-70-1-D (108-month term) as a 144-month single, aggregate term of confinement that commenced on August 17, 2015 (the date the thirty-six-month term of confinement for the Supervised Release violation was imposed). ECF No. 8-1 at 2, ¶ 13. The BOP credited Petitioner with forty-six days of prior credit time (jail credit) for time spent in official detention from June 11, 2015 (the date of his arrest by state authorities) through June 18, 2015 (the date he was released on bond by the state), and from July 10, 2015 (the date of his arrest by federal authorities) through August 16, 2015 (the day before the imposition of the revocation term). ECF No. 8-1 at 2, ¶ 13; ECF No. 8-1 at 33.

Petitioner has finished serving his revocation term in case number 7:07-CR-10-1-D,{2021 U.S. Dist. LEXIS 4} but he remains incarcerated in case number 4:15-CR-70-1-D. See *Elijah v. United States*, No. 4:15-CR-70-D, 2020 WL 5028767, at \*2 n.2 (E.D.N.C. Aug. 25, 2020). His projected release date is September 21, 2025. ECF No. 8-1 at 30-31.

Petitioner brought this action pursuant to 28 U.S.C. § 2241, seeking credit for time during which he was on Supervised Release, as well as the application of additional Good Conduct Time ("GCT") credit toward his sentence. Petitioner fully exhausted his administrative remedies before filing the Petition. See ECF No. 8-1 at 35-43.

## **II. LEGAL STANDARDS**

### **A. Summary Judgment Standard**

Summary judgment is appropriate if a party "shows there is no genuine dispute as to any issue of material fact" and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Under the framework established in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), the party seeking summary judgment shoulders the initial burden of demonstrating to the Court that there is no genuine issue of material fact. *Id.* at 323. Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, must demonstrate that specific, material facts exist which give rise to a genuine issue. *Id.* at 324.

Under this standard, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). However, although the Court views all the underlying facts and inferences in the record in the light most favorable to the non-moving party, the non-moving party nonetheless must offer some 'concrete evidence from which a reasonable juror could return a verdict in his [or her] favor.'" *Williams v. Genex Servs., LLC*, 809 F.3d 103, 109 (4th Cir. 2015) (quoting *Anderson*, 477 U.S. at 256). That is to say, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory or speculative allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. To survive summary judgment, the non-movant must provide evidence of every element essential to his action on which he will bear the burden of proving at a trial on the merits. *Celotex Corp.*, 477 U.S. at 322.

### B. Habeas Corpus

Under established local procedure in this judicial district, a careful review has been made of this Petition pursuant to the Rules Governing Section 2254 Proceedings for the United States District Court, the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), and other habeas corpus statutes. Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007).

Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the legality or duration of his custody. See *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). The primary means of attacking the validity of a federal conviction and sentence is through a motion pursuant to 28 U.S.C. § 2255, while a petition for habeas corpus under § 2241 is the proper method to challenge the computation or execution of a federal sentence. See *United States v. Little*, 392 F.3d 671, 678-79 (4th Cir. 2004).

A petitioner may bring a petition for a writ of habeas corpus under § 2241 if he is "attack[ing] the computation and execution of the sentence rather than the sentence itself." *United States v. Miller*, 871 F.2d 488, 490 (4th Cir. 1989) (per curiam); see also *Diaz v. Warden, FCI Edgefield*, No. 4:17-cv-00093-RBH, 2017 WL 2985974, at \*2 (D.S.C. July 13, 2017) (noting a § 2241 petition "is the proper means for a federal prisoner to challenge the BOP's sentencing calculations"). A § 2241 petition challenging the execution of a federal prisoner's sentence generally addresses "such matters as the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention[,] and prison conditions." *Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001); see also *Manigault v. Lamanna*, No. 8:06-047-JFA-BHH, 2006 WL 1328780, at \*1 (D.S.C. May 11, 2006) ("A motion pursuant to § 2241 generally challenges the execution of a federal prisoner's sentence, such as parole matters, computation of sentence by prison officials, prison disciplinary actions, and prison transfers."). A § 2241 petition must be brought against the warden of the facility where the prisoner is being held, *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 124 S. Ct. 2711, 159 L. Ed. 2d 513 (2004), and "in the district of confinement rather than in the sentencing court," *Miller*, 871 F.2d at 490. See also 28

U.S.C. § 2242.

### III. DISCUSSION

Petitioner sets forth three grounds for relief in his § 2241 Petition. First, he argues that the BOP erred in failing to credit him for the fourteen months he spent on Supervised Release in case number 7:07-CR-10-1-D. Second, he argues that the BOP incorrectly found that he could not be awarded additional GCT credit under the First Step Act for his original 108-month term of confinement in case number 7:07-CR-10-1-D. Finally, he argues that 18 U.S.C. 3583(e)(3) is unconstitutional pursuant to *United States v. Haymond*, 139 S. Ct. 2369, 204 L. Ed. 2d 897 (2019). For the reasons that follow, the Court recommends denying all{2021 U.S. Dist. LEXIS 8} three grounds and dismissing the Petition.

#### **A. Petitioner is not entitled to credit for time spent on Supervised Release (Petitioner's Ground One).**

Petitioner argues that the fourteen months he spent on Supervised Release in case number 7:07-CR-10-1-D should be counted as official detention under 18 U.S.C. § 3585(b). The computation of a federal sentence is governed by 18 U.S.C. § 3585 and is comprised of a two-step determination: first, the date on which the federal sentence commences and, second, the extent to which credit may be awarded for time spent in custody prior to commencement of the sentence. 18 U.S.C. § 3585. A federal sentence cannot commence before it is imposed. See 18 U.S.C. § 3585(a) ("A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served."). Credit for prior custody is governed by § 3585(b), which states:

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 sentence was imposed; or
- (2) as a result{2021 U.S. Dist. LEXIS 9} 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. 18 U.S.C. § 3585(b).

It is well-established that after a district court imposes a sentence, the Attorney General, through the BOP, is responsible for administering the sentence. *United States v. Wilson*, 503 U.S. 329, 335, 112 S. Ct. 1351, 117 L. Ed. 2d 593 (1992). The authority to determine when a federal sentence commences belongs uniquely to the BOP, subject to federal judicial review under a "deferential abuse-of-discretion standard." *United States v. Hayes*, 535 F.3d 907, 909 (8th Cir. 2008), *cert. denied*, 556 U.S. 1185 (2009).

Here, Petitioner is not entitled to any credit under 18 U.S.C. § 3585(b) for time spent on Supervised Release, as time spent on Supervised Release is not "official detention" as that term is contemplated in the statute. See *Reno v. Koray*, 515 U.S. 50, 58, 115 S. Ct. 2021, 132 L. Ed. 2d 46 (1995) (stating that "credit for time spent in 'official detention' under § 3585(b) is available only to those defendants who were detained in a 'penal or correctional facility,' and who were subject to BOP's control" (internal citation omitted)). Indeed, as the Fourth Circuit has recognized, "[f]or the purpose of calculating credit for time served under 18 U.S.C. § 3585, 'official detention' means imprisonment in a place of confinement, not stipulations or conditions imposed upon a person{2021 U.S. Dist. LEXIS 10} not subject to full physical incarceration." *United States v. Insley*, 927 F.2d 185, 186 (4th Cir. 1991) (quoting *United States v. Woods*, 888 F.2d 653, 655 (10th Cir. 1989)). Consequently, because

Petitioner was not in "official detention" while subject to the conditions of Supervised Release in case number 7:07-CR-10-1-D, none of that time is creditable against his current federal term of confinement. In other words, 18 U.S.C. § 3585(b) is of no help to Petitioner. The Court, therefore, recommends denying Ground One of the Petition.

**B. Petitioner is not entitled to additional GCT credit under the First Step Act (Petitioner's Ground Two).**

Petitioner seeks additional GCT credit under the First Step Act, arguing that although the BOP applied the First Step Act to his thirty-six-month revocation term in case number 7:07-CR-10-1-D, they did not apply it to the original 108-month term of confinement that preceded the revocation term. See ECF No. 1 at 8. He argues that, under the "unitary sentence" framework adopted by the Fourth Circuit in *United States v. Venable*, 943 F.3d 187 (4th Cir. 2019), his 108-month term of confinement and his revocation term are considered the same sentence and, therefore, he is also entitled to the retroactive application of sixty-three days of credit for the 108-month term of confinement he served prior to the amendment of 18 U.S.C. § 3624(b)(1). See ECF No. 1 at 8; ECF{2021 U.S. Dist. LEXIS 11} No. 12 at 2-3.

Respondent argues that the amendments to the GCT earnings were made retroactive, but the changes are applicable only to sentences not yet satisfied as of the effective date of the FSA-July 19, 2019. Therefore, Respondent maintains that "any sentences satisfied prior to the effective date of the FSA are not eligible to receive additional GCT credits." ECF No. 8 at 7. Thus, since Petitioner's "108-month term of confinement in [c]ase [n]umber 7:07-CR-10-1-D was satisfied prior to the effective date of the FSA, he is not eligible to receive any additional GCT credit toward that term." *Id.* The Court agrees with Respondent.

Section 102(b)(1)(A) of the First Step Act amended 18 U.S.C. § 3624(b)(1), altering the method in which GCT credit is calculated and allowing prisoners to receive up to fifty-four days GCT credit per year of the sentence imposed.<sup>2</sup> First Step Act, Pub. L. No. 115-391, 132 Stat. 5194, § 102(b)(1)(A) (2018); see also *Bottinelli v. Salazar*, 929 F.3d 1196, 1197 (9th Cir. 2019) ("[P]aragraph 102(b)(1) [of the First Step Act] amends § 3624(b)-the good time credit provision-to require the BOP to permit up to [fifty-four] days per year."). Section 102(b)(1)(A) applies retroactively "to offenses committed before, on, or after the date of enactment of this Act, except that such amendments shall not apply with respect to offenses committed before November 1, 1987." *Bottinelli*, 929 F.3d at 1200 (quoting{2021 U.S. Dist. LEXIS 12} § 102(b), 132 Stat. at 5213). The GCT amendments to § 3624(b) took effect on July 19, 2019. See *id.* at 1202.

Petitioner is correct that, in some sense, his revocation sentence is united with his original sentence. See *Haymond*, 139 S. Ct. at 2379-80 (acknowledging that an accused's final sentence includes any supervised release sentence he may receive, and further noting a "defendant receives a term of supervised release thanks to his initial offense, and whether that release is later revoked or sustained, it constitutes a part of the final sentence for his crime"); *Venable*, 943 F.3d at 194 ("[G]iven that [Defendant's] revocation sentence is part of the penalty for his initial offense, he is still serving his sentence for a 'covered offense' for purposes of the First Step Act. Thus, the district court had the authority to consider his motion for a sentence reduction, just as if he were still serving the original custodial sentence."); see also *Johnson v. United States*, 529 U.S. 694, 701, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000) (noting, with respect to an *ex post facto* challenge, that "postrevocation penalties relate to the original offense").

However, when it comes to the calculation of GCT credit under the First Step Act, district courts that have considered Petitioner's argument-including this Court-have rejected it. See *Beal v. Kallis*, No. 19-cv-3093 (DSD/HB), 2020 U.S. Dist. LEXIS 28896, 2020 WL 822439, at \*2 (D. Minn. Jan. 7, 2020)

(noting "a revocation sentence{2021 U.S. Dist. LEXIS 13} is separate and distinct from the original underlying sentence for purposes of calculating [GCT]" and ultimately concluding that "[t]he moment that Beal's prior terms of imprisonment ended was also the moment that Beal became ineligible for additional good-time credit resulting from those terms of imprisonment"), *report and recommendation adopted*, 2020 U.S. Dist. LEXIS 28142, 2020 WL 818913 (D. Minn. Feb. 19, 2020); *Barkley v. Dobbs*, No. 1:19-3162-MGL-SVH, 2019 WL 6330744, at \*3 (D.S.C. Nov. 12, 2019) (concluding that petitioner's revocation sentence was separate from his original sentence "for the purpose of calculating good-time credit"), *report and recommendation adopted*, 2019 WL 6318742 (D.S.C. Nov. 25, 2019); *Jamison v. Warden, Elkton Fed. Corr. Inst.*, No. 1:19-cv-789, 2019 U.S. Dist. LEXIS 190981, 2019 WL 5690710, at \*3 (S.D. Ohio Nov. 4, 2019) ("Because petitioner's revocation sentence is separate from his original sentence for purposes of calculating good-time credits, he is not entitled to the good-time credits he would have received on his original 36-month sentence if the First Step Act had been enacted at the time he was serving that sentence."), *report and recommendation adopted*, 2019 U.S. Dist. LEXIS 214532, 2019 WL 6828358 (S.D. Ohio Dec. 12, 2019); *Kieffer v. Rios*, No. 19-cv-899 (PJS/SER), 2019 U.S. Dist. LEXIS 143422, 2019 WL 3986260, at \*1 (D. Minn. Aug. 23, 2019) (rejecting petitioner's argument that the First Step Act entitled to him to additional GCT credit from his original sentence to be used towards his revocation sentence). Likewise, another district court in the Fourth Circuit has rejected a similar argument based on *Venable* and the "unitary{2021 U.S. Dist. LEXIS 14} sentence framework" position that Petitioner takes. See *Wilson v. Andrews*, No. 1:20CV470 (RDA/MSN), 2020 WL 5891457, at \*4-7 (E.D. Va. Oct. 5, 2020) (analyzing reasons why *Venable* is inapposite and ultimately concluding the petitioner was not entitled to additional GCT credit to reduce his term of supervised release).

This Court agrees with those courts that have already considered the issue. "Supervised release is imposed as part of the original sentence, but the imprisonment that ensues from revocation is partly based on new conduct, is wholly derived from a different source, and has different objectives altogether; it is therefore a different beast." *United States v. McNeil*, 415 F.3d 273, 277 (2d Cir. 2005); see also 28 C.F.R. § 2.35(b) ("Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release." (emphasis added)). The BOP, therefore, "acted properly in declining to apply the [First Step Act's] new good-time-credit calculation to [Petitioner's] term[ ] of imprisonment that had already concluded before the effective date of the statute." *Beal*, 2020 U.S. Dist. LEXIS 28896, 2020 WL 822439, at \*2. Accordingly,{2021 U.S. Dist. LEXIS 15} the Court recommends denying Ground Two of the Petition.

#### **C. Haymond did not invalidate 18 U.S.C. 3583(e)(3) (Petitioner's Ground Three).**

Petitioner argues that 18 U.S.C. 3583(e)(3) is unconstitutional pursuant to *Haymond*, but his position as to why is not particularly clear. In any event, *Haymond* "had no impact on [the defendant's] run-of-the-mill revocation sentence imposed under 18 U.S.C. §3583(e)(3)." *United States v. Mooney*, 776 F. App'x 171, 171 n.\* (4th Cir. 2019). The Court therefore recommends Ground Three of the Petition be denied. See *United States v. Ka*, 982 F.3d 219, 223 (4th Cir. 2020) ("Our sister circuits that have considered whether *Haymond* has implications for their § 3583(e) jurisprudence agree that it does not.").

#### **IV. RECOMMENDATION**

For the reasons set forth above, it is **RECOMMENDED** that Respondent's Motion for Summary Judgment (ECF No. 8) be **GRANTED** and that the petition be **DISMISSED**.

/s/ Molly H. Cherry

Molly H. Cherry

United States Magistrate Judge

July 29, 2021

Charleston, South Carolina

#### Footnotes

1

The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. See Rule 1(b), Rules Governing § 2254 Cases, 28 U.S.C.A. foll. § 2254.

2

Prior to the amendment pursuant to the First Step Act, the Supreme Court upheld the BOP's method of awarding GCT credit on the basis of the number of days actually served and not the length of the sentence imposed under the prior version of the statute. See *Barber v. Thomas*, 560 U.S. 474, 478-83, 130 S. Ct. 2499, 177 L. Ed. 2d 1 (2010); see also *Yi v. Federal Bureau of Prisons*, 412 F.3d 526, 529 (4th Cir. 2005). Under the now amended statute, the BOP awards GCT credit on the basis of the actual imprisonment imposed and not on the time actually served, such that prisoners may be entitled to an award of additional days of GCT.

FILED: August 9, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 20-7901  
(6:20-cv-03026-DCN)

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ANTHONY ANDREWS

Petitioner - Appellant

v.

BRYAN K. DOBBS, Warden FCI Williamsburg

Respondent - Appellee

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Keenan, Judge Wynn, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk

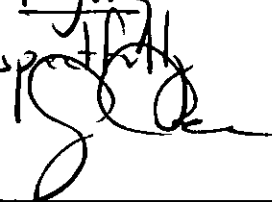


28 USC 1746

Anthony Andrews Declaration of Filing  
Under Penalty of Perjury

I Anthony Andrews placed within the unit's Mailbox on Nov. 8th, 2021 timely, with the unit officer. This institution has unit mailboxes. We place the legal mail in the Box the day or night of, then the officers do the mail, sent it for the mailroom to go out the following day. Due to the institution being on lockdown, I can't go to the mailroom the same day. Before the lockdown we could go to the mailroom and it would be stamped with the same day and go out. If I didn't give it to the unit officer on the 8th, it wouldn't have a 9th stamp on it. Mail only goes out the day after, it's placed in the Box. I signed it the 8th, of Nov. Sent it Certified Mail Service to 7020 1290 0000 1129 9067. I declare the filing was placed with the unit officer on 11/8/21 under penalty of perjury.


(1)

Respectfully  


## Certificate of Service

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