

Administrative Remedy No. 915650-A2
Part B - Response

This is in response to your Central Office Administrative Remedy Appeal, wherein you state you are entitled to additional presentence custody credit due to being detained in Canada prior to your deportation to the United States. Specifically, you are requesting the restoration of 439 days of prior custody credit previously applied to your sentence computation; from April 3, 2013, through August 7, 2013, and from April 23, 2014, through February 28, 2015. You contend the Bureau of Prisons lacks the authority to modify your sentence computation once it has been computed. In addition, you indicate this time is creditable because, the basis for the Canadian authorities detaining you, was the pending United States charges and the Court's statement in the federal sentencing transcripts that it presumed you would get credit for this time.

A review of your record reveals on August 6, 2010, you were arrested by federal authorities in Maine, pursuant to a federal arrest warrant issued in United States District Court, Middle District of Tennessee in case number 3:10-cr-00250. On September 7, 2010, you were transferred to the custody of federal authorities in Tennessee and remained in custody. On May 22, 2012, United States District Court, Middle District of Tennessee released you on bond.

On April 3, 2013, you and your parents entered Canada, claiming refugee protection on the basis you had been tortured by United States authorities and feared persecution if returned. On April 4, 2013, you were arrested by the Canada Border Services Agency (CBSA) on the grounds that your refugee claim was suspended pending an admissibility hearing. The basis for your detention was on the grounds of being a danger to the public and that you were unlikely to appear for future immigration proceedings. The Court noted that detention was warranted due to the serious nature of your United States offense, allegations of espionage and a history of violating court orders.

On August 7, 2013, Canada Minister of Public Safety and Emergency Preparedness issued a Judgment releasing you on bond, pending the outcome of your admissibility hearing.

On April 23, 2014, your bond was revoked for violating its conditions and you were rearrested by CBSA authorities pending a decision on your request for asylum.

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On November 19, 2014, United States District Court, Middle District of Tennessee filed a Superseding Indictment in case number 3:10-cr-00250 and reissued a warrant for your arrest.

On March 1, 2015, Canadian authorities rejected your request for asylum and ordered you to be removed from the country. Based on this order and an active arrest warrant, CBSA authorities released you to the "exclusive" custody of United States authorities, where you remained detained.

On February 22, 2016, you were sentenced in United States District Court, Middle District of Tennessee to a 90-month term of imprisonment for Receipt of Child Pornography and Failure to Appear, in violation of Title 18 U.S.C. § 2252 and 3146.

Pursuant to Title 18 U.S.C. § 3585(b), Credit for prior custody; official detention does not include time spent in custody pursuant to a final determination of deportability. An inmate being held pending a civil deportation determination is not being held in "official" detention pending criminal charges.

The Canadian Court noted that your detention was warranted due to being a danger to the public and that you were unlikely to appear for future immigration proceedings. Your pending charges in the United States were not the basis for your detention.

Title 18 U.S.C. § 3585, Calculation of term of imprisonment; is the statutory authority which provides that the responsibility for the calculation of federal sentences rests with the United States Attorney General, delegated to the Bureau of Prison.

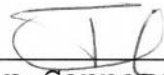
The U.S. Supreme Court ruling in Wilson v. United States, 503 U.S. 329, 112 S. Ct. 1351(1992), upheld that the responsibility for administering sentences was the Bureau of Prisons and not the courts. Therefore, the Bureau of Prisons not only has the authority, it has the responsibility to update your federal sentence computation to ensure it has been has been computed as directed by federal statute, the intent of the sentencing court and Program Statement 5880.28, Sentence Computation Manual (CCCA of 1984).

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Your sentence has been computed as directed by federal statute,
and applicable Bureau of Prisons policy.

Accordingly, your appeal is denied.

3/1/18
Date


Ian Connors, Administrator
National Inmate Appeals