



(Judgment of USCA, ECF No. 94.) This court had clearly imposed a 33-month sentence to be served consecutively to any “subsequently imposed state sentences.” (ECF No. 75.)

The federal court record regarding incarceration custodial status in this case is a bit murky. It appears that Mollo was arrested on state charges on December 14, 2009. On the same date a warrant was issued by this court for the revocation of his supervised release. (ECF No. 48.) That warrant acted as a detainer holding Mollo in the event he ever made state court bail, which he apparently never did. (Motion to Vacate ¶ 2, ECF No. 90.) His primary custodian was the State of Maine and apparently he remained in state custody unable to make bail until December 27, 2010, when he was sentenced on state charges. (ECF No. 90-2.) Mollo says in his current motion his combined state court sentences (all of which ran concurrent with each other) expired by their own terms (283 days) on September 23, 2010, even though they were not imposed until after the federal sentencing. (Motion to Appoint at 1.) Thus Mollo says he is entitled to be credited with the 104 days between September 23, 2009, and January 4, 2011, because during that time period he was not properly in state custody because his (yet to be imposed) state sentences would have already expired, and the only process holding him in jail was the Marshal’s detainer lodged in conjunction with this court’s warrant of arrest.

The revocation petition in this case appears to be based, at least in part, on the same conduct and charges as gave rise to the state arrest. If Mollo is correct in his assertions, the statutory authority for his position would be found at 18 U.S.C. § 3585(b)(1) or (2) (requiring a defendant to be given credit toward service of a term of imprisonment for any time spent in official detention prior to the date his federal sentence commences that has not been credited against another sentence). Mollo’s point is that the 104 days between September 23, 2009 and

January 4, 2011, have not been credited against another sentence and thus should be credited against this sentence.

However, as Mollo has been told before, his remedy is not for this court to amend its judgment or issue clarifying orders. This court meant what it said at the time of sentencing, service of the 33-month sentence was to be served *consecutive* to service of the state sentences that had not yet then been imposed. Properly computing credit against other sentences and this court's sentence is a task that rests with the Bureau of Prisons, guided by 18 U.S.C. § 3585(b), the actual jail records regarding dates of incarceration, and the state court judgments and commitments relevant to Mollo's case. If Mollo is unable to receive administrative relief, his remedy is to file a petition pursuant to 28 U.S.C. § 2241 against his current custodian. See *Muniz v. Sabol*, 517 F.3d 29, 34 (1st Cir. 2008) (“[A] habeas petition seeking relief from the manner of execution of a sentence is properly brought under 28 U.S.C. § 2241” against the current custodian). There is no legal authority for this court to appoint counsel to represent Mollo during his administrative proceedings with the Bureau of Prisons. His motion for appointment of counsel is denied.

CERTIFICATE

Any objections to this Order shall be filed in accordance with Federal Rule of Criminal Procedure 59.

***So Ordered.***

March 8, 2013

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

Case title: USA v. MOLLO

Related Case: [2:12-cv-00153-DBH](#)

Date Filed: 12/20/2006

Date Terminated: 04/24/2007

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Assigned to: JUDGE D. BROCK  
HORNBY

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*TERMINATED: 04/24/2007*

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