IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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YANCEY L. WHITE,

ORDER

Petitioner,

03-C-581-C

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.

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This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Yancey White is in an inmate at the Federal Correctional Institution at Oxford, Wisconsin, serving a sentence imposed by the United States District Court for the Southern District of Illinois. He contends that the Bureau of Prisons has calculated his good time credits contrary to 18 U.S.C. § 3624. Petitioner has been granted leave to proceed in forma pauperis. In addition, he has attached documents to his petition showing that he has exhausted his administrative remedies. Clemente v. Allen, 120 F.3d 703, 705 (7th Cir. 1997).

A claim of improper denial of credit for time served is not cognizable under 28 U.S.C. § 2255. Petitioner has chosen the proper vehicle for his challenge to the calculation of his

sentence. Bell v. United States, 48 F.3d 1042 (7th Cir. 1995); see In re Davenport, 147 F.3d 605, 608 (7th Cir. 1998) (prisoner may resort to § 2241 only when motion under § 2255 is "inadequate or ineffective to test the legality of his detention"). In addition, because petitioner's custodian is located in the Western District of Wisconsin, this court has jurisdiction over his petition. Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494-96 (1973); Hanahan v. Luther, 760 F.2d 148, 151 (7th Cir. 1985).

Petitioner's statement of facts consists of one paragraph, in which he alleges that he was sentenced to 10 years in prison and that the Bureau of Prisons concluded that he was entitled to 470 days of good time credit. He contends that this calculation is erroneous under 18 U.S.C. § 3624(b) and that the correct amount of credit he should receive is 54 days a year, or a total of 540 days.

Petitioner's challenge raises the question whether the Bureau of Prisons is following the directives of Congress when it computes sentence credit. Section 3624(b)(1) provides:

> Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. [setting forth reasons for withholding or granting credit] Subject to paragraph (2), credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

Section 3624(b) applies to petitioner because he is serving a sentence of more than one year but less than life. Seizing on the reference in the statute to "54 days," petitioner argues that the amount of good time to which he is entitled should be determined by multiplying 54 by 10 for a total of 540 days. Petitioner's argument makes sense on its face. He is subject to a ten-year term of imprisonment; he should receive a credit of 54 days for each year of that term.

In rejecting petitioner's request for an administrative remedy, the warden explained the position of the Bureau of Prisons:

> 54 days of GCT [good conduct time] may be earned for each full year **served** on a sentence in excess of one year, with the GCT being prorated for the last partial year. Since you will not be **in service** of a complete 120 months, you cannot calculate your GCT credits by 120 months by 54 days. Applying this formula, you are entitled to 470 days GCT for a 120-month sentence.

The warden did not explain what "this formula" was. However, the administrator for national inmate appeals wrote to petitioner that "the Bureau of Prisons computed your sentence as required by Program Statement 5880.28, Sentence Computation Manual - CCA and all applicable statutes." According to this manual, the bureau applies the following formula in computing good time credits:

> The GCT formula is based on dividing 54 days (the maximum numbers of days that can be awarded for one year in service of a sentence) into one day which results in the portion of one day of GCT that may be awarded for one day served on a sentence. 365 days divided in 54 days equals .148. Since .148 is less than one full day, no GCT can be awarded for one day served on the sentence. Two days of service on a

> sentence equals .296 (2 x .148) or zero days GCT; three days equals .444 (3 x .148) or zero days GCT; four days equals .592 (4 x .148) or zero days GCT; five days equals .74 (5 x .148) or zero days GCT; six days equals .888 (6 x .148) or zero days GCT; and seven days equals 1.036 (7 x .148) or 1 day GCT. The fraction is always dropped.

Applying this formula to a hypothetical sentence of one year and one day, the manual sets forth the following calculations:

> 366 x .148 = 54.168 (366 + 54 = 420)
>
> 366 - 54 = 312 x .148 = 46.176 (312 + 46 = 358)
>
> 366 - 46 = 320 x .148 = 47.36 (320 + 47 = 367)
>
> 366 - 47 = 319 x .148 = 47.212 (319 + 47 = 366)

The manual concludes, "Thus – 319 days actually served plus 47 days of GCT equals 366 days, or a sentence of 1 year and 1 day." In other words, the bureau believes that the proper way to implement § 3624(b)(1) is to compute a yearly credit that, with time actually served, will not exceed 366 days.

Petitioner complains not without good reason that the bureau's method of calculating good time is unduly complicated. However, the bureau is not necessarily required to employ a simple method so long as the method it applies is consistent with the language of § 3624. The key clause of § 3624 provides that an inmate receives 54 days of credit "at the end of each year of the prisoner's term of imprisonment." This raises the threshold question whether the bureau is interpreting "term of imprisonment" correctly to mean *time served*

rather than the *sentence imposed*. Neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has addressed this issue. But see United States v. Prevatte, 66 F.3d 840, 846 (7th Cir. 1995) (Posner, J., concurring) (interpreting statute as using sentence imposed rather than time served as basis for good time credit calculation).

It is arguable that the phrase "term of imprisonment" is ambiguous; it could be construed reasonably to mean either the term sentenced or the amount of time served. Pacheco-Camacho v. Hood, 272 F.3d 1266, 1268-69 (7th Cir. 2001). However, a "time served" construction becomes less plausible when the statute is read as a whole. The first clause of § 3624(b)(1) states that the statute applies to any "prisoner who is serving a term of imprisonment of more than 1 year." In this context, "term of imprisonment" must refer to the sentence imposed. It would be impossible to determine whether an inmate qualified for good time credit by looking at how much time he would serve *after* his good time was taken into account. Courts presume that Congress intends to give the same meaning to the same term used in different parts of a statute. Belom v. National Futures Association, 284 F.3d 795, 798 (7th Cir. 2002). In addition, when Congress has used "term of imprisonment" in other statutes, it generally does so as a synonym for "sentence." See, e.g., 18 U.S.C. § 506(b)(3); 18 U.S.C. § 844(h); 18 U.S.C. § 924(c)(1)(D)(ii) ; 18 U.S.C. § 1503(a); 18 U.S.C. § 3143(b)(1); 18 U.S.C. § 3551(b)(3); 18 U.S.C. § 3553(c); 18 U.S.C. § 3559; 18 U.S.C. § 3621(a); 18 U.S.C. § 4014.

The bureau has promulgated a regulation setting forth its interpretation of § 3624 as mandating computation of good time credit on the basis of time served. 28 C.F.R. § 523.20. Assuming that the bureau has authority to enact such a regulation, courts may be required to give deference to the bureau's interpretation of an ambiguous statute. Pachecho-Camacho, 272 F.3d 1266 (rejecting argument that rule of lenity applies to § 3624 and makes deference to agency inappropriate). However, if the statute is unambiguous, the bureau's interpretation is entitled to no weight. FDA v. Brown & Williamson Tobacco, 529 U.S. 120, 125-26 (2000).

Because there is a substantial question whether the bureau is calculating petitioner's good time in accordance with § 3624(b)(1), respondent will be directed to show cause why this petition should not be granted.

ORDER

IT IS ORDERED that

1. Respondent is to file a response to this petition not later than twenty (20) days from the date of service of the petition, showing cause, if any, why this writ should not issue on petitioner's claim that the bureau is calculating his good time credits in violation of 18 U.S.C. § 3624(b)(1).

2. In its response, respondent is requested to advise the court whether, in the opinion

of the respondent, petitioner has exhausted his administrative remedies as required by Sanchez v. Miller, 792 F.2d 694, 699 (7th Cir. 1986). Respondent is also requested to furnish the court with records and transcripts relevant to the question of exhaustion in order to enable the court to reach a determination of that question. If such records and transcripts cannot be furnished within the twenty (20) day period allowed for the filing of the response, respondent is requested to advise the court, in the response, when such papers will be made available to the court.

3. Petitioner may have twenty (20) days from the service of the response to file a traverse to the allegations of the response submitted by the respondent.

Entered this 22nd day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge