

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL JAY MOLZEN,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

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ORDER

04-C-318-C

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 in which petitioner contends that the Federal Bureau of Prisons is violating 18 U.S.C. § 3624(b) by calculating his good conduct time on the basis of the time he has served rather than on his imposed sentence. In an order entered in this case on June 23, 2004, I stayed issuance of an order to show cause pending a decision by the Court of Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410, a case raising the identical issue.

Now petitioner has filed a motion for voluntary dismissal of his action. In support of the motion, petitioner explains that he is anticipating a transfer outside this district and the Seventh Circuit. As long as his habeas corpus petition is pending in this court, he must remain at the Federal Correctional Institution in Oxford. Petitioner prefers to voluntarily

dismiss his petition in this court without prejudice to his refiling it in a district in the state to which he is transferred.

The rules governing habeas corpus proceedings do not include a rule pertaining to voluntary dismissals of habeas corpus petitions. Therefore, under Fed. R. Civ. P. 81(a)(2), I will apply Fed. R. Civ. P. 41(a)(1), which provides:

. . . an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Respondent has not filed a response in this case. Therefore, I accept petitioner's notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1) and will dismiss this action without prejudice.

#### ORDER

IT IS ORDERED that petitioner's notice of voluntary dismissal is ACCEPTED and

this action is DISMISSED without prejudice. The clerk of court is directed to close this file.

Entered this 6th day of July, 2004.

BY THE COURT:  
BARBARA B. CRABB  
District Judge