

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

DAVID SPOHR,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-329-C

This is another petition for a writ of habeas corpus under 22 U.S.C. § 2241 that raises the same legal issue as the one decided in White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), that is, whether the Federal Bureau of Prisons is acting contrary to 18 U.S.C. § 3624(b) by calculating good conduct time on basis of an inmate's time served rather than his imposed sentence. In White, I answered this question affirmatively and ordered the warden to recalculate White's good conduct time on the basis of his sentence, which would reduce White's incarceration by approximately 70 days.

Since I decided White's case, many inmates at the Oxford prison have filed petitions similar to his in which they seek to have their good conduct time recalculated in accordance with White. In an order dated June 4, 2004, I stayed the proceedings in this and several

other cases because I decided to appoint counsel in one of the cases for the purpose of determining whether the suits should proceed as a class action. However, on June 11, 2004, I lifted the stay in this case because petitioner alleged that, under White, his correct release date would be June 28, 2004. I gave respondent until July 18, 2004, in which to show cause why the petition should not be granted.

In his response, respondent concedes that the legal issue in this case is controlled by White. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence. However, I am not ordering petitioner to be released on June 28, 2004. Respondent has submitted documentation showing that petitioner's release date would not be June 28 under any interpretation of § 3624(b). Rather, under the bureau's interpretation of the statute, petitioner's release date would be March 2, 2006. Aff. of Diane Hedrich, dkt. #6, Exh. 5. Because petitioner has completed a drug abuse treatment program, he is eligible for a reduction in his sentence of up to one year. 18 U.S.C. § 3621(e)(2)(B) (bureau of prisons "may" reduce a prisoner's term up to one year if he successfully completes treatment program). This would move his release date to March 2, 2005. Aff. of Hedrich, dkt. #6, Exh. 6 ("This adjusted 3621(e) release date is provisional, and may change, depending on the circumstances."). Assuming that petitioner's sentence will be reduced a full year, his release date under White will be in December 2004.

Petitioner appears to be confusing his release date with the date that the bureau may

transfer him to a community corrections center. Bureau of Prisons Program Statement No. 5330.10 provides: “[T]he 18 U.S.C. § 3621(e) release date shall be established to provide the residential drug program graduates with a reasonable opportunity to spend up to 180 days in a CCC even if this results in an early release period of less than 12 months.” Under this program statement, to receive a full year deduction in his sentence, petitioner may have to be transferred to a community corrections center by the end of June 2004.

The scope of this habeas corpus petition is limited to the question whether the bureau has calculated petitioner’s good conduct time in accordance with § 3624(b). I do not decide under what circumstances, if any, the bureau must reduce sentences a full year under § 3621(e) or transfer inmates to community correction centers so that they may be eligible to receive the full year deduction.

Had I known that petitioner’s release date was several months away, I would not have lifted the stay or ordered respondent to show cause why the petition should not be granted. However, because respondent has already expended resources in filing a response, I do not see sufficient reason in reimposing the stay at this point. In future cases, I will not lift the stay or issue an order to show cause until the inmate submits his sentence computation

report from the bureau showing that his *release* date is imminent.

ORDER

IT IS ORDERED that petitioner David Spohr's petition for a writ of habeas corpus under 28 U.S.C. § 2241 is GRANTED. Respondent Joseph Scibana is directed to recalculate petitioner's good conduct time on the basis of each year of his *sentence* rather than on time actually served.

Entered this 22nd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge