

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

GREGORY E. PALOIAN,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-388-C

On June 23, 2004, I stayed the proceedings in this habeas corpus action pending a decision by the Court of Appeals for the Seventh Circuit in White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 2004). Now petitioner Gregory E. Paloian has filed a motion titled "Motion to Lift Stay and Order Recalculation and Awarding of Good Time Credit. In the motion, petitioner notes that his pre-release date is drawing near and that he will be prejudiced if he is required to wait much longer to be afforded the relief he has requested in his petition and that this court granted to White.

Petitioner appears not to be aware that on December 2, 2004, the court of appeals reversed this court's ruling and held that the Bureau of Prisons' interpretation of the statutes

governing calculation of good-time credit is entitled to deference. White v. Scibana, 390 F.3d 997 (7th Cir. 2004). This means that if I were to lift the stay in petitioner's case, he could not prevail on his claim that he is being subjected to illegal custody because of the manner in which the Bureau of Prisons is calculating his good conduct time. I have not lifted the stay and dismissed this case, however, because petitioner White has moved for rehearing en banc and that motion is still pending before the court of appeals. Thus, there is a possibility that the court will grant the motion for rehearing and uphold this court's decision in an en banc opinion. Until that happens, if it does, I must view the December 2 reversal as the law of the case. Given this circumstance, petitioner cannot show that he will be prejudiced if the stay in place in this case is not lifted at this time. Accordingly, his motion will be denied.

ORDER

IT IS ORDERED that petitioner Gregory E. Paloian's motion to lift the stay imposed

in this case on June 23, 2004, is DENIED.

Entered this 9th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge