

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

CHARLES L. RYAN,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-391-C

In an order entered in this case on July 6, 2004, I granted petitioner leave to proceed in forma pauperis in this habeas corpus action on the condition that he pay \$2.26 toward the \$5 filing fee. Petitioner paid the required portion of the fee. However, I imposed a stay of all proceedings pending a decision by the Court of Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410.

On August 16, 2004, petitioner moved to lift the stay. In support of the motion, petitioner pointed out that a detainer that previously had been lodged against him had been dropped, and that the Bureau of Prisons was taking steps to process him immediately for halfway house placement.

In an order dated August 27, 2004, I denied petitioner's motion to lift the stay. At that time, I focused, as petitioner did, on his imminent halfway house placement. I noted

that in Caldwell v. Scibana, 04-C-342-C, (a copy of which was enclosed to the parties) I had decided that I would not impose a stay in cases raising the claim raised in White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), if (1) the petitioner submits a sentence computation from the Bureau of Prisons showing the inmate's term of imprisonment, good conduct time that has been both earned and disallowed, current release date and pre-release preparation date; and (2) I can conclude on the basis of that information that the petitioner would be entitled to imminent release or eligible for an imminent halfway house placement after his good conduct time is recalculated in accordance with White. I noted that petitioner's motion to lift the stay was supported by a copy of an "Inmate Request to Staff" form dated August 12, 2004, in which petitioner's case manager advised petitioner that he was "currently being considered for CCC placement and [his] paperwork is being processed." I concluded that although petitioner had shown that he was imminently eligible for halfway house placement, it was unnecessary to lift the stay in order to facilitate his transfer, because the Bureau of Prisons was already arranging his move.

Now petitioner has filed a second motion to lift the stay. In this motion, petitioner states that if his good conduct time is recalculated in accordance with White, he will be eligible for full release on November 23, 2004. A review of the file in this case reveals that on July 12, 2004, petitioner supplemented his petition with documentation from the Bureau of Prisons showing that he is scheduled for release on December 6, 2004, if he earns all 94 days of good conduct time that the Bureau projects he will earn. This documentation does

not show the length of petitioner's sentence as it should. Nevertheless, I am persuaded that if petitioner's good conduct time is recalculated in accordance with White, he will be eligible for release before December 6.

The Court of Appeals for the Seventh Circuit has agreed to expedite the appeal in White. It heard oral argument on September 9, 2004, and is expected to make a decision before the end of the year. Because petitioner may well reach his release date before the court of appeals rules on the White appeal, I conclude that petitioner will be irreparably harmed if he is forced to wait until the decision is rendered before he can obtain a ruling in this case. Therefore, I will grant petitioner's second motion to lift the stay in this case.

Petitioner should be aware that 28 U.S.C. § 2242 requires that an application for a writ of habeas corpus be signed and verified by the person for whose relief it is intended. Petitioner has not declared or verified *under penalty of perjury* that the assertions of fact made in his petition are true and correct. Until this defect is cured, I will be unable to enter an order granting petitioner relief. Therefore, I am enclosing to petitioner with a copy of this order a copy of his petition, as supplemented with the Bureau of Prisons' sentencing computation data sheet submitted on July 12, 2004. Petitioner is to add the required verification or declaration at the end of the petition and return the verified petition to the court promptly.

Petitioner does not allege that he has exhausted his administrative remedies. However, I will waive this requirement because any delay in receiving relief will cause

petitioner substantial prejudice and because the Bureau of Prisons has predetermined the issue. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (court may waive exhaustion requirements for § 2241 to prevent prejudice caused by unreasonable delay or when agency has predetermined issue).

Because petitioner is proceeding in forma pauperis, the court will arrange with the United States Marshal to serve his petition on the respondent.

ORDER

IT IS ORDERED that no later than November 12, 2004, petitioner is to submit a copy of his habeas corpus petition on which he has sworn or verified under penalty of perjury that his assertions are true.

Further, IT IS ORDERED that respondent may have until November 15, 2004, in which to show cause why this petition for a writ of habeas corpus should not be granted on petitioner's claim that the Bureau of Prisons is calculating his good time credits in violation of 18 U.S.C. § 3624(b)(1). There is no need for a traverse.

Entered this 3rd day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge