

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

JOHN D. BARNES,

Petitioner,

v.

JOSEPH SCIBANA,

Respondent.

ORDER

04-C-406-C

In an order entered in this case on July 7, 2004, 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. Now petitioner has filed a letter dated October 26, 2004, which I construe as a motion to lift the stay.

When I imposed the stay in this case, I had not yet ruled in Caldwell v. Scibana, 04-C-342-C (copy attached), 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.

Petitioner's motion to lift the stay is supported by documentation showing that on May 26, 2004, he was sentenced to an 84-month term of imprisonment. The Bureau of Prisons has calculated his good conduct time to be 329 days and projected his release date as September 24, 2005 and his pre-release date as March 24, 2004. If the Bureau recalculates petitioner's release date in accordance with White, petitioner will be entitled to release approximately 49 days earlier, in early February 2005.

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. Therefore, I am satisfied that petitioner's release date is not so immediate that he will be prejudiced by a stay of the proceedings pending the court of appeals's decision.

ORDER

IT IS ORDERED that petitioner's motion to lift the stay in this case is DENIED.

Entered this 4th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge