

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

EUGENE SCHMITZ,

Petitioner,

v.

JOSEPH SCIBANA,
Warden, FCI-Oxford,

Respondent.

ORDER

04-C-414-C

In White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), I concluded that the Bureau of Prisons was acting contrary to 18 U.S.C. § 3624(b) by calculating petitioner Yancey White's good conduct time on the basis of the actual time he had served rather than his imposed sentence. I granted White's petition for a writ of habeas corpus under 28 U.S.C. § 2241 and ordered the warden to recalculate White's good conduct time in accordance with § 3624(b).

Like White, petitioner Eugene Schmitz is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. His petition under § 2241 raises the same issue as that in White: he alleges that the bureau is calculating his good conduct time on the basis of time served rather than the sentence imposed. Petitioner has paid the \$5 filing fee.

In the time that has passed since Yancey White's petition was granted, many other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons's method of calculating their good time credits. I have stayed most of these petitions pending a decision from the Court of Appeals for the Seventh Circuit in White. Because the court of appeals will likely resolve the question definitively, it makes sense to wait to decide new cases, unless the petitioner has a looming release date. Therefore, until the court of appeals makes its decision, I will issue orders to show cause only in cases in which (1) the petitioner submits a sentence computation from the bureau showing his release date and (2) his release date would be imminent after a recalculation of his good conduct time in accordance with White.

Although petitioner alleges that his release date is looming, he has not included his sentence computation with his petition. (Petitioner cites an attachment to his petition as support for a July 10, 2004 release date, but no attachment was included with his petition.) As a result, I cannot determine whether it is appropriate to issue an order to show cause. Petitioner should submit the computation to the court immediately to insure that he will receive timely relief.

ORDER

IT IS ORDERED that a STAY is imposed on the question whether the court should issue an order to show cause or enter a stay in this case pending a decision by the Court of

Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410. Petitioner may have until July 13, 2004, in which to submit documentation revealing the date of his sentence and his release date as it is presently calculated by the Bureau of Prisons. If petitioner fails to respond to this order by July 13, 2004, I will enter an order staying the action pending a decision by the court of appeals.

Entered this 25th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge