

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 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 an order dated June 25, 2004, I advised petitioner that I would not issue an order to show cause until he submitted his sentence computation prepared by the bureau. Petitioner has done so. Unfortunately for petitioner, his sentence computation report shows that he is not entitled to any good conduct time. Petitioner is currently serving a four-month term for a violation of his supervised release. Under 18 U.S.C. § 3624(b), an inmate is not eligible to earn good conduct time unless he is serving a sentence of more than one year. As a result, the holding in White does not apply to him.

ORDER

IT IS ORDERED that Eugene Schmitz's petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DISMISSED.

Entered this 1st day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge