

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

RUSSELL ANDERSON,

Petitioner,

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.

ORDER

04-C-421-C

This is a petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, in which petitioner contends that the Federal Bureau of Prisons is calculating his good conduct time erroneously. He relies on White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), in which I concluded that 18 U.S.C. § 3624(b) requires the bureau to calculate good conduct time on the basis of the inmate's imposed sentence rather than the actual time he had served. In an order entered earlier in this case, I stayed all proceedings pending a decision by the Court of Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410. Subsequently, I lifted the stay and ordered respondent to file a response to the petition no later than December 2, 2004.

Respondent filed its response on December 2. On that same day, the court of appeals

released its decision in White v. Scibana, No. 04-2410, slip op. (December 2, 2004) (copy enclosed). In the opinion, 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.

On December 3, 2004, respondent moved for permission to file a supplemental response seeking dismissal of petitioner's petition in light of the court of appeals' decision. According to respondent, a prompt decision is critical, because petitioner is nearing his release date.

Because there is no question that petitioner's petition must be dismissed in light of the court of appeals' decision in White, respondent's motion for leave to file a supplemental response will be denied as unnecessary. The holding in White makes clear that the Bureau of Prisons' method of calculating petitioner's good conduct time is not illegal. Therefore, petitioner cannot succeed in showing that he is in custody in violation of the constitution or laws of the United States.

ORDER

IT IS ORDERED that

1) Respondent's motion for leave to file a supplemental response to petitioner's petition for a writ of habeas corpus is DENIED as unnecessary.

2) This petition for a writ of habeas corpus is DISMISSED for petitioner's failure to show that he is in custody in violation of the Constitution or laws of the United States.

Entered this 10th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge