

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

TIMOTHY M. TONKOVICH,

Petitioner,

v.

JOSEPH SCIBANA,

Respondent.

ORDER

04-C-450-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).

Petitioner Timothy Tonkovich 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 the Yancey White's petition was granted, several

other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons' method of calculating their good time credits. I have stayed the proceedings in most of these actions pending a decision on the appeal filed in White's case. I have issued orders to show cause only where it appeared clear that the petitioner's release date would occur before the Court of Appeals for the Seventh Circuit would decide the issue one way or another. On June 30, 2004, the court of appeals granted respondent's motion to expedite the White appeal and directed that oral argument be scheduled for September, 2004.

In this case, it appears from the documentation petitioner submitted with his petition that his release date is imminent and that he would be prejudiced by a stay of the proceedings. The documentation reveals that petitioner was committed to the custody of the Bureau of Prisons on September 12, 2003, to serve a 15-month sentence. His projected release date under the Bureau of Prisons' method of calculating good conduct time is September 8, 2004. If his good time credit is recalculated in accordance with White, he will be entitled to release approximately 9 days earlier, on or about August 31, 2004. I conclude that petitioner will be irreparably harmed if he is forced to wait until the court of appeals decides White before he can obtain a ruling in his case.

Petitioner does not allege that he has exhausted his administrative remedies. Nevertheless, I will waive this requirement because any delay in receiving relief will cause petitioner substantial prejudice. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir.

2004) (court may waive exhaustion requirements for § 2241 when necessary to prevent prejudice caused by unreasonable delay). Accordingly, respondent will be directed to show cause why this petition should not be granted.

Petitioner should note that because he is not proceeding in forma pauperis, it is his obligation to serve the petition on the respondent. Pursuant to Fed. R. Civ. P. 81, the rules governing service of process in civil actions are applicable to this proceeding because no specific rules governing service of process in § 2241 habeas corpus actions exist elsewhere in a statute or in the Rules Governing Section 2254 and 2255 cases. The rule governing service of process in civil actions brought against a federal official in his official capacity is Fed. R. Civ. P. 4(i). According to this rule, petitioner's petition must be sent with a copy of this court's order by certified mail to: 1) the respondent; 2) the United States Attorney for the Western District of Wisconsin; and 3) the Attorney General in Washington, D.C. The address for the United States Attorney in this district is: The Hon. J.B. Van Hollen, 660 W. Washington Ave., Madison, WI, 53703. The address for the Attorney General in Washington, D.C. is: The Hon. John Ashcroft, United States Attorney General, 950 Pennsylvania Ave., N.W., Rm. 5111, Washington, DC 20530. Enclosed to petitioner with a copy of this order are the extra copies of his petition and this court's order.

ORDER

IT IS ORDERED that respondent may have until July 23, 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 9th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge