

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

NATHANIEL KINNARD,

ORDER

Petitioner,

04-C-510-C

v.

JOSEPH SCIBANA, F.C.I. Oxford,

Respondent.

Petitioner Nathaniel Kinnard is a prisoner at the Federal Correctional Institution in Oxford, Wisconsin. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, 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) required the bureau to calculate good conduct time on the basis of the inmate's imposed sentence rather than the actual time he had served. He alleges that, under White, he is entitled to additional days of good conduct time.

In an order dated August 2, 2004, I waived the requirement for exhausting administrative remedies because any delay in granting relief could cause petitioner

substantial prejudice. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). In addition, waiving the exhaustion requirement is appropriate in this case because respondent and the bureau have predetermined the issue. Id. Further, I did not impose a stay as I have in other cases relying on White because petitioner may soon be eligible for transfer to a halfway house if his good conduct time is recalculated in accordance with White. I directed respondent Joseph Scibana to show cause why the petition should not be granted.

In his response, respondent concedes that the legal issue in this case is controlled by White. In addition, respondent concedes that petitioner may eligible for transfer to a halfway house as early as August 20, 2004 if petitioner's good conduct time is recalculated. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

I emphasize, however, that I cannot order respondent to place petitioner in a halfway house on a particular date. Under 18 U.S.C. § 3624(c), the Bureau of Prisons is required, when it is "practicable," to allow inmates to spend a "reasonable part" of their sentence learning to prepare for release. However, the statute grants the bureau discretion to decide how the inmate is to be prepared for release and how much time the inmate needs to prepare. Although it appears that the bureau's practice is to transfer most inmates to halfway houses for the last six months of their sentence, Monahan v. Winn, 276 F. Supp. 2d 196, 199 (D. Mass. 2003), this practice is not required by statute. Therefore, I express no

opinion on the question whether or when petitioner should be transferred to a halfway house.

ORDER

IT IS ORDERED that petitioner Nathaniel Kinnard's petition for a writ of habeas corpus is GRANTED. Respondent Joseph Scibana is directed to recalculate petitioner's good conduct time on the basis of each year of his sentence rather than on time actually served.

Entered this 11th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge