

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.

On August 11, 2004, I granted petitioner Nathaniel Kinnard's petition for a writ of habeas corpus and directed respondent to recalculate petitioner's good conduct time on the basis of his imposed sentence rather than the actual time he had served. Judgment closing the case was entered on that same date. Now petitioner has filed an "emergency motion for order of this court," which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

In his motion, petitioner does not contend that the court erred in granting his petition for a writ of habeas corpus. Indeed, he concedes that respondent has revised his sentence calculation sheet and adjusted his good conduct time in accordance with this court's order. Rather, petitioner appears to believe that because he has been credited with

additional good conduct time, he is entitled to an earlier release to a halfway house. He requests an order directing respondent Scibana either to alter his pre-release date by the same number of days that he has been credited with additional good conduct time or to release petitioner to home confinement.

It is unclear precisely what petitioner's complaint is. Before this court ordered the Bureau of Prisons to recalculate petitioner's good conduct time, the Bureau of Prisons' computation data sheet showed that petitioner was projected to earn 70 days of good conduct credit and to be eligible for release to a halfway house on August 28, 2004. The documentation petitioner has submitted with his present motion shows that after this court's order was issued, petitioner was credited with 11 additional days of good conduct time and his pre-release preparation date was moved up to August 18, 2004.

In any event, even if petitioner has not yet been released to a halfway house, I would not grant his motion to alter or amend the judgment in this case. In the August 11 order, I addressed the precise issue petitioner is raising now. Because petitioner may not have read this paragraph, I will repeat it here.

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.

Petitioner suggests that respondent's refusal to release him immediately to a halfway house might be a retaliatory move designed to punish him for exercising his constitutional right to file a lawsuit. If that is petitioner's claim, he will have to raise it in a separate civil action.

ORDER

IT IS ORDERED that petitioner Nathaniel Kinnard's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED.

Entered this 23rd day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge