

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

BRANDON J. MICEK,

ORDER

Petitioner,

04-C-512-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

Petitioner Brandon Micek 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 July 26, 2004, I waived the requirement for exhausting administrative remedies. Waiving this requirement in a case brought under § 2241 is

appropriate when the agency has predetermined the issue or when exhaustion would cause an unreasonable delay. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). Both of these reasons are present in this case. Further, I did not impose a stay as I have in other cases relying on White because petitioner may be eligible for immediate 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. Petitioner's current projected release date is February 2005; he is eligible for a transfer to a halfway house on September 1, 2004. Respondent admits that, under White, petitioner's release date and the date on which he would be eligible for a halfway house transfer would be 35 days earlier. 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 petitioner to be placed 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 Brandon Micek'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 2nd day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge