

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

KENSHAWN DENWIDDIE,

Petitioner,

ORDER

v.

04-C-629-C

(WARDEN) SCIBANA, FCI OXFORD,

Respondent.

Plaintiff Kenshawn Denwiddie, an inmate at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. In the petition, petitioner alleges that the Bureau of Prisons is acting contrary to 18 U.S.C. 3624(b) by calculating his good conduct time on the basis of the actual time he has served rather than his imposed sentence. In addition, petitioner alleges that the Bureau of Prisons abused its legal authority in deciding to exclude from eligibility for early release under 18 U.S.C. § 3624(b) persons convicted of violations of 18 U.S.C. § 922(g). Petitioner has paid the \$5 filing fee.

I will address petitioner's second claim first, because it requires little discussion. It will be dismissed for the same reason I expressed in an earlier action brought by petitioner,

Denwiddie v. Scibana, 04-C-471-C, in which petitioner raised the identical claim. The law is settled in this circuit that the Bureau of Prisons' interpretation of 18 U.S.C. § 3621(e)(2)(B)'s "nonviolent offense" provision to preclude persons convicted of violations of 18 U.S.C. § 922(g) does not violate either the Constitution or a federal statute. Parsons v. Pitzer, 149 F.3d 734 (7th Cir. 1998).

As for petitioner's claim that the Bureau of Prisons is acting contrary to 18 U.S.C. 3624(b) by calculating his good conduct time on the basis of the actual time he has served rather than his imposed sentence, I decided that issue in petitioner Yancey White's favor in White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004). Respondent has appealed the decision and the Court of Appeals for the Seventh Circuit has granted respondent's motion for expedited treatment of the appeal and scheduled oral argument for today, September 9, 2004.

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 decided to issue orders to show cause if (1) the petitioner submits a sentence computation from the Bureau of Prisons showing the inmate's term of imprisonment, good conduct time that has been both earned and disallowed, current release date and pre-release

preparation date; and (2) I can conclude on the basis of that information that the petitioner would be entitled to imminent release or eligible for an imminent halfway house transfer after his good conduct time is recalculated in accordance with White.

In this case, it appears from the documentation petitioner submitted with his petition that he will not be prejudiced by a stay of the proceedings. The documentation reveals that petitioner was sentenced on February 6, 2003, to serve a 42-month sentence. He does not have a projected pre-release date, but his projected statutory release date under the Bureau of Prisons' method of calculating good conduct time is July 31, 2005. If his good time credit is recalculated in accordance with White, he may be eligible for release approximately 24 days earlier. I conclude that petitioner will not 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.

ORDER

IT IS ORDERED that petitioner's claim that the Bureau of Prisons abused its legal authority in deciding to exclude from eligibility for early release under 18 U.S.C. § 3624(b) persons convicted of violations of 18 U.S.C. § 922(g) is DISMISSED.

Further, IT IS ORDERED that a STAY is imposed on petitioner's claim that the Bureau of Prisons is acting contrary to 18 U.S.C. 3624(b) by calculating his good conduct time on the basis of the actual time he has served rather than his imposed sentence, pending

disposition of the appeal in White v. Scibana, No. 04-2410.

Entered this 9th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge