

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

MARK A. PERKINS,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-646-C

Petitioner Mark Perkins 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.

From the documentation petitioner submitted with his petition, I concluded that petitioner's pre-release date may be imminent if his release date is recalculated in accordance with White. Therefore, in an order dated October 13, 2004, I directed respondent Joseph

Scibana to show cause why the petition should not be granted. In the same order, I waived the requirement that petitioner exhaust his administrative remedies, because any delay in granting relief could cause petitioner substantial prejudice and because respondent and the bureau have predetermined the issue. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). In addition, I told petitioner that he would have to submit a petition that had been verified as required by 28 U.S.C. § 2242, and that it was his responsibility to serve the respondent formally with his petition pursuant to Fed. R. Civ. P. 4(l), and to submit proof of service to the court as promptly as possible.

Now respondent has filed his response to the petition and petitioner has submitted a verified petition. However, petitioner has not yet submitted proof that he served his petition by certified mail on respondent. Indeed, on October 20, 2004, petitioner wrote to ask for permission to serve respondent by regular mail. I denied petitioner's request in an order dated October 25, 2004, advising petitioner that I did not have legal authority to waive the service requirements of Fed. R. Civ. P. 4, and that if he could not afford to pay for certified mail, he could submit a trust fund account statement for the past six months so that I could make a determination whether he could proceed in forma pauperis for the purpose of serving his petition. Petitioner has not responded to this order.

In his response, respondent states that "On October 20, 2004, the petitioner filed a sworn affidavit of service as ordered by the court (Dkt. 5)," but respondent is mistaken. The

document petitioner filed on October 20 is not an affidavit of service. It is his request for permission to allow him to serve his petition by regular mail, and docket #5 is this court's October 25 order denying his request.

Petitioner appears not to be aware that I cannot rule on his petition until the record reflects that respondent has been served with the petition in accordance with Fed. R. Civ. P. 4 or that respondent has waived proper service of process. At the time, the record is silent on these matters.

ORDER

IT IS ORDERED that petitioner may have November 16, 2004, in which to submit proof of service of his petition on respondent OR a stipulation from respondent's counsel that respondent waives service of process OR a trust fund account statement for the past six months and a request for leave to proceed in forma pauperis.

Further, IT IS ORDERED that if, by November 16, 2004, petitioner fails to respond

to this order, then I will dismiss this petition for petitioner's failure to prosecute it.

Entered this 1st day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge