

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

PHILIP LLOYD,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-742-C

On October 7, 2004, judgment was entered dismissing this petition for a writ of habeas corpus in which petitioner had sought an order directing the Bureau of Prisons to calculate his good conduct time on the basis of the actual time he had served rather than his imposed sentence. In dismissing the petition, I found that petitioner was not entitled to earn good conduct time because he is currently serving a twelve-month term for a violation of his supervised release. Under 18 U.S.C. § 3624(b), an inmate is not eligible to earn good conduct time unless he is serving a sentence of *more* than one year. Now petitioner has filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

In his motion, petitioner argues that this court erred in refusing to view his full sentence, including the time he served prior to release on parole, as the sentence upon which

good conduct time should be calculated. Petitioner urges this court to treat his present term of imprisonment as a continuation of his earlier term and order the Bureau of Prisons to calculate his good time accordingly.

Although I can appreciate why petitioner understands himself to be serving the last portion of a longer sentence he received prior to his release on parole, this fact makes no difference to the determination whether he is currently eligible to earn good time credits.

28 C.F.R. § 2.35(b) provides:

It is the [Parole] Commission's interpretation of the statutory scheme for parole and good time that the only function of good time credits is to determine the point in a prisoner's sentence when, in the absence of parole, the prisoner is to be conditionally released on supervision Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release.

Under this regulation, petitioner's previously earned good conduct time expired when he was paroled. See Ray v. Brewer, 808 F.2d 19, 20 (7th Cir. 1986) (finding 28 C.F.R. § 2.35(b) to be proper interpretation of federal good time and parole statutes). The term of imprisonment imposed upon petitioner following the revocation of his parole is a new term for the purpose of calculating good time. This term was one year. He is thus prevented from earning additional good time under 18 U.S.C. § 3624(b).

Because petitioner has failed to show that this court erred in dismissing his petition

for a writ of habeas corpus, his motion to alter or amend the judgment will be denied.

ORDER

IT IS ORDERED that petitioner Philip Lloyd's motion to alter or amend the judgment entered herein on October 7, 2004, is DENIED.

Entered this 27th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge