

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

KENNETH DEAN SMITH©,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-865-C

Petitioner Kenneth Dean Smith© is an inmate 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. In an order entered on November 18, 2004, I directed respondent to show cause why petitioner's petition should not be granted. In addition, I asked petitioner to submit proof that he served his petition on the respondent. On November 29, 2004, petitioner filed proof of service of his petition upon the respondent.

Respondent has filed a response to the petition as directed. In the response,

respondent notes that petitioner has not exhausted his administrative remedies as he is required to do under Sanchez v. Miller, 792 F.2d 694, 699 (7th Cir. 1986). However, I waived this requirement in the November 18 order, because any delay in receiving relief will cause petitioner substantial prejudice and because the Bureau of Prisons has predetermined the issue. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (court may waive exhaustion requirements for § 2241 to prevent prejudice caused by unreasonable delay or when agency has predetermined issue).

Respondent states that petitioner was sentenced on May 18, 2004, to a 43-month term of imprisonment. He received 792 days of prior custody credit. Under the Bureau of Prisons' method of calculating petitioner's good conduct time, petitioner is projected for release on May 1, 2005. If his good time credit is recalculated in accordance with White, he will be eligible for release approximately 25 days earlier, and his prerelease date may be similarly adjusted. 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 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. 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 Kenneth Dean Smith'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 1st day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge