

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

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HUMBERTO PACHECO,

Petitioner,

ORDER

v.

04-C-919-C

JOSEPH SCIBANA, Warden of  
Oxford Prison Camp,

Respondent.  
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Petitioner Humberto Pacheco, an inmate at the Federal Prison Camp in Oxford, Wisconsin, has filed a pleading styled as a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. In this pleading, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner is a Mexican inmate presently confined at the Federal Prison Camp in Oxford, Wisconsin. He was sentenced on October 31, 2001 to 87 months of imprisonment. When a drug counselor met with petitioner to evaluate him, petitioner described his alcohol

abuse problems. Despite evidence in petitioner's central file of his abuse of alcohol, respondent Scibana has denied him admission to the 500 hour in-house drug program. A white inmate with the same documentation of alcohol abuse has been allowed into the program. If respondent Scibana were to allow petitioner into the program, petitioner would have the opportunity to receive up to 12 months off his sentence.

## DISCUSSION

Although petitioner presents his claim in a petition for a writ of habeas corpus, he is not seeking relief cognizable in a habeas corpus action. See, e.g., Richmond v. Scibana, 387 F.3d 602 (7th Cir. 2004) (petitioner's claim of entitlement to an *opportunity* to be considered for release not proper in habeas corpus). He asserts that he has a right under federal law to receive drug treatment and that respondent's refusal to place him in treatment forecloses his ability to earn eligibility for an earlier release. In addition, he contends that he has been treated unequally under the law because of his race. Even if I were to rule in favor of petitioner on one or both of these claims (and I express no opinion whatsoever at this time whether I would do so), the only relief petitioner could obtain is an order directing respondent to consider petitioner for placement in the drug treatment program. I would not order petitioner's release or a shortening or modification of his sentence, which is the only relief available to petitioner in habeas corpus. Therefore, I will dismiss this petition without

prejudice to petitioner's refiling his pleading as a civil action brought under this court's general jurisdiction statute, 28 U.S.C. § 1331, and Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 ( 1971).

Petitioner should bear in mind that if he wishes to pursue his claims in a non-habeas corpus civil action, his complaint will be subject to the 1996 Prison Litigation Reform Act. This means that before he can file his complaint in this court, he will have to exhaust his administrative remedies on his claims pursuant to 42 U.S.C. § 1997e. Once he files his complaint, he will have to pay the full \$150 filing fee or request leave to proceed in forma pauperis under 28 U.S.C. § 1915 (\$250 if petitioner files after February 7, 2005, when new filing fee rates go into effect), which is supported by a trust fund account statement for the six-month period immediately preceding the filing of his complaint. 28 U.S.C. § 1915(a)(2). If petitioner requests pauper status, the court will first determine whether he has three strikes under 28 U.S.C. § 1915(g), that is, that he has had three complaints in federal court dismissed for a reason such as failure to state a claim or as legally frivolous or malicious. If he does not, the court will determine his financial ability to pay the filing fee and assess an initial partial payment pursuant to § 1915(b). Whether petitioner pays the full filing fee or obtains permission to proceed after payment of a portion of the fee, petitioner's complaint will be screened under either §§ 1915(e)(2) or 1915A and be dismissed if the court finds that the action is legally frivolous or malicious, fails to state a claim upon which relief may be

granted or seeks money damages against a defendant who is immune from such relief. If petitioner's complaint is dismissed for any one of these reasons, petitioner will receive a strike under § 1915(g).

ORDER

IT IS ORDERED that this petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is DISMISSED for petitioner's failure to show that he is in custody in violation of the constitution or laws of the United States.

Entered this 10th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge