

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

MICHAEL TRISTANO,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,

Defendant.

ORDER

07-C-113-C

Plaintiff Michael Tristano, a federal prisoner, received a preliminary injunction from this court on April 18, 2007, directing defendant Federal Bureau of Prisons to consider plaintiff for a transfer to a halfway house, using the statutory criteria provided in 18 U.S.C. § 3621(b). After defendant denied his transfer, plaintiff brought an “Emergency Motion for Rule to Show Cause,” in which he argues that defendant failed to apply the statutory factors in good faith. He asks the court to order defendant either to transfer him to a halfway house or to “explain in open court” why it refused to transfer him.

Unfortunately for plaintiff, I cannot give him the relief he seeks. To begin with, plaintiff is well aware that the bureau has great discretion in deciding when to place a prisoner in a halfway house. The only statutory requirement is the one found in 18 U.S.C.

§ 3624(c), which requires the bureau to assure that a prisoner spends a “reasonable part” of the last 10 percent of his term of imprisonment in a halfway house or similar setting. Plaintiff concedes that his current scheduled date for halfway house transfer, June 14, 2007, complies with that requirement.

This leaves 18 U.S.C. § 3621(b), under which the bureau “may” designate as a prisoner’s place of imprisonment “any available penal or correctional facility” that meets minimum health standards and that “the Bureau determines to be appropriate and suitable.” Although the bureau is required to consider several factors in making that determination, the statute does not prescribe any circumstances under which transfer to a halfway house (or any other particular facility) is required. Thus, if the bureau considers the relevant factors in making its determination, a challenge under the Administrative Procedures Act (the statute under which plaintiff brought his case) could not succeed unless the plaintiff could show that the decision was arbitrary, capricious or otherwise an abuse of discretion, a difficult standard for plaintiff to meet. 5 U.S.C. § 706. Notably, plaintiff does not cite any cases in which a court found such an abuse of discretion under similar circumstances. E.g., Berrios v. Minor, 2007 WL 914087, *3 (M.D. Pa. 2007) (rejecting prisoner’s request for immediate transfer to halfway house because bureau’s reasons were “neither irrational nor arbitrary”).

The statute at issue lists the following criteria that defendant must consider in determining an appropriate placement:

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence . . . ;
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In its response to plaintiff's motion, defendant addresses each of the five factors. The parties agree that the last two factors are not implicated in this case and that the first two factors are either neutral or favor plaintiff, although with respect to the first factor, defendant says that the halfway house for which plaintiff has been approved "is ordinarily near, but not over capacity." Dkt. #10, at ¶10. Defendant emphasizes the third factor: the history and characteristics of the prisoner. Defendant says that plaintiff has a stable income, a healthy family relationship, no emotional or health problems and no alcohol or drug abuse. In other words, plaintiff does not need the transitional services that a halfway house would provide.

I cannot conclude that defendant's decision is arbitrary or capricious. After all, the purpose of a halfway house placement is to allow the prisoner an opportunity "to adjust to and prepare for . . . re-entry into the community." 18 U.S.C. § 3624(c). See also United States v. Mallon, 345 F.3d 943, 949 (7th Cir. 2003) ("Halfway houses are, as the name

suggests, facilities that hold their charges in custody part of the time (usually nights and weekends) while releasing them during working hours, so they can begin employment and start the transition to a life of freedom.”) If plaintiff does not need time to adjust, the central purpose of a halfway house would not be furthered by placing plaintiff in one.

Plaintiff does not dispute the accuracy of the bureau’s factual assertions regarding his need for services. Rather, he points to his exemplary record as supporting his request for a transfer to a halfway house. However, this argument rests on a misunderstanding that the primary purpose of a halfway house is to serve as a reward for prisoners with good behavior.

Alternatively, plaintiff suggests that defendant did not actually consider the statutory factors because when he asked his case manager whether she used them in making a decision, she said, “Not really.” This argument is not persuasive for two reasons. First, according to the case manager, two other staff members conducted plaintiff’s re-evaluation. Dkt. #14, at ¶15. One of those staff members, Penelope Frederick (the case manager coordinator), avers in her affidavit that all of the statutory factors were considered and she explains how that was done. Dkt. #15, at ¶10-11. Second, even if I concluded that one of the decision makers had not considered all the appropriate factors, the only remedy I could grant plaintiff would be another consideration of his request for a transfer. However, such a remedy would come to nothing because the bureau has now provided a reasonable basis for its decision that is consistent with § 3621(e).

Finally, plaintiff advances a number of other arguments: defendant did not consider plaintiff's reasons for wanting to be transferred, it did not follow all aspects of Program Statement 7310.04 and the bureau's past practice was to allow most prisoners to spend six months in a halfway house. Although these are arguments that plaintiff is free to make to the bureau in a request to reconsider its decision, none of them shows that the decision is inconsistent with § 3621(b) or with the preliminary injunction. Defendant was required to consider plaintiff for a transfer to a halfway house using the factors set forth in § 3621(b). Because defendant has now done that, there is no other relief that this court can afford plaintiff.

ORDER

Plaintiff Michael Tristano's "Emergency Motion for Rule to Show Cause" is DENIED.

Entered this 15th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge