

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

JAMES LAMAR WILLIS,

Petitioner,

v.

CAROL HOLINKA (WARDEN),

Respondent.

ORDER

10-cv-271-slc¹

Petitioner James Lamar Willis has filed an amended petition under 28 U.S.C. § 2241 as directed by the court in an order dated June 25, 2010. Petitioner's claim is that the Bureau of Prisons violated 18 U.S.C. § 3624(c) by refusing to place him in a halfway house for 12 months. In the June 25 order, I informed petitioner that I could not consider his claim without information about the reason for the bureau's decision, petitioner's projected release date and the date he is scheduled to be transferred to a halfway house. In his amended petition, petitioner alleges that his projected release date is October 1, 2011, the date he is scheduled to be transferred to a halfway house is April 1, 2011, and that the only

¹ I assuming jurisdiction over this case for the purpose of this order.

reason the bureau gave him for limiting his time in a halfway house is that he did “not need any extra time” there. Petitioner’s allegations are sufficient at this stage to show that his claim is neither moot nor unripe.

Under the Second Chance Act of 2007, 18 U.S.C. § 3624(c),

The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

The language of the statute makes it clear that prisoners are not guaranteed 12 months at a halfway house. Rather, the bureau is required, when “practicable,” to allow a prisoner to spend “a portion” of the last months of his term under conditions that will prepare him for reentry. Sessel v. Outlaw, 2009 WL 1850331, *4 (E.D. Ark. 2009) (“These are matters left to the discretion of the BOP.”); Daraio v. Lappin, 2009 WL 303995 (D. Conn. Feb. 9, 2009) (bureau “retains discretion under the Second Chance Act to decide whether and when an inmate should be placed at” halfway house). Neither the amount of time nor the place for that preparation is spelled out by § 3624(c)(1).

This does not mean that the bureau has absolute authority to deny a prisoner transfer to a halfway house. Under § 3624(c)(6), the bureau must “ensure that placement in a community correctional facility . . . is . . . of sufficient duration to provide the greatest

likelihood of successful reintegration into the community.” In addition, decisions about placement in a halfway house must be made “on an individual basis” and take into account the factors listed in 18 U.S.C. § 3621(b). 18 U.S.C. § 3624(c)(6)(A)-(B). See also Sessel, 2009 WL 1850331, at *4; Daraio, 2009 WL 303995; 28 C.F.R. § 570.22 (“Inmates will be considered for pre-release community confinement in a manner consistent with 18 U.S.C. section 3621(b), determined on an individual basis, and of sufficient duration to provide the greatest likelihood of successful reintegration into the community, within the time-frames set forth in this part.”)

Because petitioner alleges that the bureau did not consider the factors under § 3621(b), I will direct respondent Holinka to show cause why the petition should not be granted. In addition to addressing the merits of the petition, respondent should address the question whether petitioner’s claim is properly brought under § 2241 rather than the Administrative Procedure Act. Richmond v. Scibana, 387 F.3d 602, 605 (7th Cir. 2004) (concluding that challenge under previous version of § 3624 should be brought under APA); Graham v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991) (claim may not be brought under § 2241 unless it involves “a quantum change in the level of custody”).

ORDER

IT IS ORDERED that

1. No later than 20 days from the date of service of the petition, respondent Holinka is to file a response showing cause, if any, why this writ should not issue with respect to petitioner James Lamar Willis's claim that the bureau is violating his federal rights by refusing to transfer him to a halfway house until the last six months of his sentence.

2. Petitioner may have 20 days from the service of the response in which to file a traverse to the allegations of the response submitted by respondent.

3. For the sake of expediency, I will send the petition to respondent, the local United States attorney and the United States Attorney General via certified mail in accordance with Fed. R. Civ. P. 4(i), along with a copy of this order.

4. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed

copies of his documents.

Entered this 16th day of July, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge