

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

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NORBERT PHILLIPS,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.  
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ORDER

11-cv-505-bbc

Petitioner Norbert Phillips, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. He contends that the Bureau of Prisons has violated his rights by failing to place him in a halfway house for the full 12 months authorized by the Second Chance Act of 2007, enacted as 18 U.S.C. § 3624(c). He has paid the \$5 filing fee. In his petition, petitioner avers that he has presented the Bureau evidence supporting his request to be transferred to a halfway house for the full 12 months. In particular, petitioner provided the Bureau evidence that he will obtain employment if he is released and that he needs additional time to adjust to living in the community. However, the Bureau denied his request for additional time. Petitioner contends that in doing so, the Bureau failed to give him adequate consideration for early transfer as required by 18 U.S.C. § 3621(b).

I have concluded in several previous cases that a petition under § 2241 is the proper way to challenge the Bureau's refusal to transfer a prisoner to a halfway house because success on the claim would mean that the petitioner is entitled to "a quantum change in [his] level of custody" at a particular time. Curry v. Holinka, 11-cv-386-bbc, dkt. #2 (W.D. Wis. Jul. 7, 2011); Willis v. Holinka, 2010 WL 4225879, \*1 (W.D. Wis. Oct. 20, 2010); Carmichael v. Holinka, 2009 WL 2512029, \*1 (W.D. Wis. Aug. 17, 2009); Pence v. Holinka, 2009 WL 3241874, \*1 (W.D. Wis. Sept. 29, 2009); see also Graham v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991); Glaus v. Anderson, 408 F.3d 382, 387-88 (7th Cir. 2005) ("Graham outlines a clear distinction: a petitioner requests either a 'quantum change in the level of custody,' which must be addressed by habeas corpus, or 'a different program or location or environment,' which raises a civil rights claim").

As to the merits of the petition, petitioner relies on 18 U.S.C. § 3624(c)(1), which provides:

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 a set amount of time 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. 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 is required to issue regulations that “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, the required regulations are intended to insure that placement in a halfway house is made “on an individual basis” and takes into account the factors listed in 18 U.S.C. § 3621(b). 18 U.S.C. § 3624(c)(b)(A)-(C). These factors include “(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 . . .; and (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.” 18 U.S.C. § 3621(b).

At this stage of the proceedings, it is impossible to determine whether the Bureau has applied these criteria in good faith when denying petitioner’s request for earlier placement in a halfway house. Accordingly, I will direct respondent Holinka to show cause why the petition should not be granted.

#### 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 Norbert Phillips'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 Warden Holinka, 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.

Entered this 23d day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge