

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

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REGINALD WALKER,

Petitioner,

v.

C. HOLINKA,

Respondent.

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OPINION AND ORDER

11-cv-356-wmc

Under the Second Chance Act of 2007, 18 U.S.C. § 3624(c), the Federal Bureau of Prisons is authorized to place prisoners in a residential re-entry center, or halfway house, for up to 12 months before the end of the prisoner's term of imprisonment. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner Reginald Walker contends that the Bureau is violating § 3624(c) by refusing to transfer him to a halfway house until the last six months of his sentence. On June 2, 2011, the court ordered respondent C. Holinka to show cause why this petition should not be granted. Based on Holinka's response and Walker's reply, the petition will be denied on its merits, even though Walker did not exhaust his administrative remedies.

FACTS

Petitioner Reginald Walker is presently incarcerated at the Federal Correctional Institution in Oxford, Wisconsin (FCI-Oxford). His projected release date is August 3, 2012.

On March 30, 2011, the Unit Team at FCI-Oxford, recommended that up to twelve months in a halfway house before release was appropriate for Walker. In reaching this conclusion, Janis Braker, a member of the unit team, considered the five factors outlined in 18 U.S.C. § 3621(b) and completed an inmate skills development plan. The factors listed in § 3621(b) 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—
  - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
  - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission.

The halfway house referral packet, submitted with respondent's response as Exhibit B, does not detail the unit team's consideration of these factors.

The unit team's decision was reviewed by James Pfeifer, the case management coordinator. In his declaration submitted in response to Walker's petition, Pfeifer outlined his consideration of all five factors. He determined that Walker's history and characteristics, statement of the sentencing court, and any policy statement of the Sentencing Commission did not weigh in favor or against additional halfway house placement. Pfeifer concluded, however, that the unavailability of bed space near Gary, Indiana, where Walker was to reside after his release, and the nature and circumstances of Walker's offense suggested that 270

days of halfway house placement would best balance the lack of resources and Walker's needs.

Pfeifer forwarded the completed referral packet to the Community Corrections Office on April 14, 2011, recommending that Walker be placed in a halfway house 270 days prior to his release. The community corrections manager reviewed the recommendation and balanced it with the available resources. Because of lack of available bed space in the area where Walker was to be released, the manager determined the Bureau was able to provide Walker a six-month placement in a halfway house. Walker is to be placed at a halfway house in Michigan City, Indiana, on February 7, 2012.

Walker did not file an administrative grievance concerning his halfway house placement because the decision on the institution level was favorable to him.

#### OPINION

Initially, respondent argues that the petition should be dismissed for petitioner's failure to exhaust his administrative remedies. In apparent defense of respondent's exhaustion argument, Walker contends that he relied on respondent's informal resolution, recommending Walker for up to 365 days of placement in a halfway house, rather than formally appealing his "BP-8" complaint. Given Walker himself acknowledges the "informal resolution" was not for 365 days but rather "up to" that length, it is at best unclear why Walker would have felt justified in relying on this resolution, especially after learning that the placement date would be no more than 270 days and ultimately 180 days from his date

of release. Regardless, the court will address the merits of Walker’s petition rather than dismissing the petition for failure to exhaust. *See Jackson v. Carlson*, 707 F.2d 943, 949 (7th Cir. 1983) (“[E]xhaustion is not a jurisdictional prerequisite in federal prisoner cases.”).

Under 18 U.S.C. § 3624(c)(1),

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.

By its express terms, § 3624 does not guarantee a prisoner 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 residency in a reentry center, is spelled out by § 3624(c)(1). Indeed, the language of the statute grants substantial discretion to the Bureau to determine the appropriate amount of time spent in reentry provided it does not “*exceed* 12 months.” (Emphasis added.)

This does not mean that the Bureau of Prisons has absolute authority to deny a prisoner transfer to a halfway house. Following enactment of the Second Chance Act, 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.” 18 U.S.C. § 3624(c)(6). In addition, the required regulations are intended to ensure 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)(6)(A)-(B).

Even so, the bureau’s determination is entitled to deference unless it is arbitrary, lacking in rational basis or contrary to the requirements of the statute. *Singleton v. Smith*, No. 09-1248, 2010 WL 744392, at \*1 (N.D. Ill. Feb. 26, 2010); *Pence v. Holinka*, No. 09-cv-489-slc, 2009 WL 3241874, at \*3 (W.D. Wis. Sept. 29, 2009).

In response to the order to show cause, respondent Holinka submits a declaration from James Pfeifer, the Case Management Coordinator, who made the recommendation that Walker be placed in a halfway house 270 days prior to his release. The declaration shows individualized consideration of each of the five factors set forth in § 3621(b). Based on this evaluation, he concluded that Walker was not eligible for halfway house placement more than nine months before his release date. While Pfeifer forwarded this recommendation to the Community Corrections Office, the community corrections manager determined that the available bed space allowed only a six-month placement in a halfway house for Walker.

Walker argues that he was entitled to 365 days halfway house placement because that was what the unit team recommended. Unfortunately, because of the unavailability of halfway house bed space in Gary, Indiana, Pfeifer had to reduce the unit team’s recommendation to 270 days. Further, because of continued unavailability of bed space, the community corrections manager reduced Walker’s halfway house placement to six months. Since the Bureau of Prisons properly considered the required factors, including the halfway house resources available in the area where it was most appropriate for Walker to be released, this court will not second guess its decision.

On a clean slate, a decisionmaker looking at Walker's circumstances might reach a different conclusion. But this is not a clean slate; this court's role is not to review the factors independently and decide what is best for Walker, much less what is best relative to other inmates' needs and finite resources. The decision of the Bureau of Prisons is entitled to deference. Because the court cannot find the Bureau's decision was arbitrary or otherwise failed to follow the requirements of the statute, the court will deny the petition for a writ of habeas corpus.

ORDER

IT IS ORDERED that petitioner Reginald Walker's petition for a writ of habeas corpus is DENIED for failure to show that he is in custody in violation of the Constitution or the laws of the United States and this case is DISMISSED.

Entered this 21st day of December, 2011.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge