

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

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JEROME CAMPBELL,

Petitioner,

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.  
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ORDER

04-C-311-C

In White v. Scibana, \_\_\_ F. Supp. 2d \_\_\_, No. 03-C-581-C, 2004 WL 877606 (W.D. Wis. Apr. 23, 2004), I concluded that the Bureau of Prisons was acting contrary to 18 U.S.C. 3624(b) by calculating petitioner Yancey White's good conduct time on the basis of the actual time he had served rather than his imposed sentence. I granted White's petition for a writ of habeas corpus under 28 U.S.C. § 2241 and ordered the warden to recalculate White's good conduct time in accordance with § 3624(b).

Like White, petitioner Jerome Campbell is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. His petition under § 2241 raises the same issue as that in White: he alleges that the bureau is calculating his good conduct time on the basis of time served rather than the sentence imposed. Petitioner has paid the \$5 filing fee.

In an order dated May 26, 2004, I ordered respondent Scibana to show cause why the petition should not be granted. In his response, respondent concedes that the legal issue in this case is identical to that in White. In addition, he concedes that petitioner is entitled to release *now* if the method for calculating good conduct time affirmed in White is employed. See Resp. to Request for Adm. Remedy, attached to, Aff. of Linette Ritter, Attachment 1, dkt. #8 (“An award of 990 days subtracted from your January 7, 2007, full term date would result in an already reached April 22, 2004 release date.”).

Nevertheless, respondent has moved to stay the proceedings in this case pending his appeal in White. Respondent’s primary argument is that it would be burdensome to apply White across the board. He writes: “This Court’s decision in White will have a significant impact on the BOP as it may affect as many as 140,000 sentence calculations of inmates presently in its custody.” Response, dkt. #6, at 5. I note first that this court may not exercise jurisdiction over nonconsenting wardens in other judicial districts. Moore v. Olson, No. 03-4053, 2004 WL 1088316 (7th Cir. May 17, 2004) (§ 2241(a) requires petitions to be brought in judicial district in which petitioner is incarcerated unless warden waives requirement). Thus, the number of inmates potentially affected by White is a significantly lower number; respondent states that there are 1200 inmates in the Oxford prison, which is the only federal prison in the Western District of Wisconsin.

Second, respondent does not explain persuasively why it would be burdensome to

recalculate the good conduct time of inmates in accordance with White. It is the *bureau's* calculation that is complex. The basic calculation under White is very simple: multiplying the number of years in an inmate's sentence by 54 and then prorating any remaining months. It is not clear why applying this method to even more than 1000 inmates would be overly time consuming or expensive. In any event, I need not consider the potentially broad implications of White in this case. Petitioner seeks only to have White applied to him. *No* additional work needs to be done to recalculate his good conduct time because the parties agree that he should be out now under the White standard.

Respondent makes a second argument: "Additionally, any inmates whose release date, like the petitioner, is computed under the White rule to occur before the Seventh Circuit decides White will be released before the completion of their lawful sentences." Response, dkt. #6, at 5-6. Of course, this argument assumes that White is incorrect. If I grant respondent's motion to stay and the court of appeals affirms White, this will mean that petitioner and others like him will be denied their freedom in violation of the law.

Respondent cannot argue seriously that a weighing of the balance of potential harms favors his position. He does not identify any reason beyond the fact of potential premature release that supports a stay. On the other hand, a stay would prejudice petitioner greatly as it would be akin to a denial of his petition. Under the bureau's calculation, petitioner is scheduled for release on August 28, 2004. Even if respondent seeks and obtains expedited

review of White, it could be several months before a decision is reached. As the Supreme Court has recognized, *any* unlawful increase in a prisoner's sentence causes him substantial prejudice. Glover v. United States, 531 U.S. 198, 204 (2001). The harm caused to petitioner with every passing day by illegally depriving him of his freedom cannot be compared to the potential harm to respondent if petitioner is released less than three months before the time calculated by the bureau. Respondent's motion for a stay will be denied and the petition will be granted.

#### ORDER

IT IS ORDERED that respondent Scibana's motion to stay the proceedings in this case is DENIED. FURTHER, IT IS ORDERED that petitioner Jerome Campbell's petition for a writ of habeas corpus is GRANTED. Respondent is directed to release petitioner from the Federal Correction Institution immediately.

Entered this 4th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge