

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

ANTHONY PERRY, RICHARD
HENDERSHOT, JOSEPH JACKSON,
MICHAEL RICHMOND and
ERIBERTO GALINDO,

Petitioners,

v.

JOSEPH SCIBANA, Warden of the
Oxford Prison Camp,

Respondent.

ORDER

04-C-332-C

MICHAEL HILL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-288-C

MARTY LEE BELEW,

Petitioner,

ORDER

04-C-314-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

WILLARD M. RICE,

Petitioner,

ORDER

04-C-317-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

MICHAEL JAY MOLZEN,

Petitioner,

ORDER

04-C-318-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

WAYNE INWOOD,

Petitioner,

ORDER

04-C-319-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

DAVID SPOHR,

Petitioner,

ORDER

04-C-329-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

JOHN R. CALDWELL,

Petitioner,

ORDER

04-C-342-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

JOSEPH EDWARD JOHNSON,

Petitioner,

ORDER

04-C-384-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

GREGORY E. PALOIAN,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

FLOYD BAKER,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-388-C

ORDER

04-C-392-C

The petitioners in each of these cases are inmates at the Federal Correctional Institution in Oxford, Wisconsin. They contend that the Federal Bureau of Prisons is violating 18 U.S.C. § 3624(b) by calculating their good conduct time on the basis of the time they have served rather than on their imposed sentences. They seek writs of habeas corpus

under 28 U.S.C. § 2241 directing respondent Joseph Scibana to recalculate their good conduct time in accordance with § 3624(b).

As petitioners and respondent are well aware, the reason for the influx of petitions is the decision in White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), in which I concluded that § 3624(b) required the bureau to calculate good conduct time of the basis of the inmate's sentence. In an order dated June 4, 2004, because of the large number of petitions that the court was receiving, I decided to appoint counsel in Perry v. Scibana, 04-C-332-C, for the purpose of determining whether all of the cases should proceed as a class action. I stayed most of the cases pending a determination whether a class should be certified.

Having considered the issue further, I have concluded that it may have been premature to invite a motion for class certification in Perry. Respondent has appealed White. However the court of appeals decides the case, it is likely to be the end of the matter. If the court affirms White, respondent should apply the decision to all Oxford prisoners without requiring individual orders for each inmate. If the court reverses White, I would be bound by that decision and could not grant relief to a class. In either event, the need for a class action will become moot.

It is true that there is no guarantee that the court of appeals will decide White in the near future. However, respondent is seeking expedited review, which I predict he will obtain.

(Respondent is seeking a stay as well, which, if granted, would undermine the usefulness of a class action.) Further, class actions are notorious for the amount of time they take to get underway. Even in a case such as this one, in which the legal issue is already decided, it could take several months to certify a class and grant relief. Thus, from an efficiency standpoint, a class action would not necessarily be as beneficial as it might have seemed at first blush.

From respondent's point of view, one arguable benefit of a class action is that respondent would not have to respond to numerous petitions. However, I do not intend on requiring respondent to show cause in response to every petition that the court receives. The stay that I have imposed in each of these cases will remain in effect pending a decision from the court of appeals. I will issue an order to show cause in a case relying on White only if (1) the petitioner submits a sentence computation from the bureau showing his release date and (2) his release date would be imminent after a recalculation of his good conduct time in accordance with White. If the court of appeals takes longer than expected to render a decision, I will lift stays in individual cases as the inmate's release date approaches. This practice will eliminate any prejudice to petitioners as well as reduce the burden on respondent and the bureau.

One final matter must be addressed. One of these cases, Perry v. Scibana, 04-C-332-C, was brought by multiple petitioners. As I noted in the June 4 order, this court has a

policy that prohibits inmates proceeding pro se from prosecuting a group complaint because of the many problems inherent in administering such cases. Lindell v. Litscher, 212 F. Supp. 2d 936 (W.D. Wis. 2002) (prisoners who bring joint lawsuits may be unable to remain in contact with each other for length of time it takes lawsuit to reach resolution; prisoners' restricted freedom may limited plaintiffs' ability to discuss strategy for combined lawsuit or to draft documents jointly for filing in case; one inmate may act on behalf of other plaintiffs in prosecuting the joint lawsuit although lacking legal authority to do so). Now that I have decided not to appoint counsel, Perry presents the same problems I noted in Lindell. Therefore, I will sever the petitioners' claims in Perry. However, this order should have little practical effect on those petitioners. Because I am severing the claims rather than dismissing them, petitioners do not have to pay any additional filing fees. Further, the petitioners will not have to submit new petitions. The clerk of court will make copies of the petition for each of the new case numbers. Finally, because the cases of each of the petitioners in Perry will be stayed, no other action is required of petitioners at this time. Petitioners will be informed by the court if additional information is needed at a later date.

ORDER

IT IS ORDERED that

1. Michael Gonring, Emily Feinstein and Adrienne Olson are RELIEVED of their

obligation to represent the petitioners in Perry v. Scibana, 04-C-332-C, or any other petitioner in these cases.

2. The claims of petitioners in Perry are SEVERED pursuant to Fed. R. Civ. P. 21. The clerk of court is directed to assign new case numbers for petitioners Richard Hendershot, Joseph Jackson, Michael Richmond and Eriberto Galindo. Petitioner Anthony Perry will be the sole petitioner for Case No. 04-C-332-C.

3. The stay in each of these cases remains in effect pending a decision by the Court of Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410, unless otherwise ordered by this court.

Entered this 23rd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge