

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

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KEITH CADE

Petitioner,

ORDER

v.

04-C-360-C

JOSEPH SCIBANA,

Respondent.

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Petitioner Keith Cade is a prisoner at the Federal Correctional Institution in Oxford Wisconsin. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner contends that the Federal Bureau of Prisons is calculating his good conduct time erroneously. He relies on White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), in which I concluded that 18 U.S.C. § 3624(b) required the bureau to calculate good conduct time on the basis of the inmate's imposed sentence rather than the actual time he had served. He alleges that, under White, he is entitled to additional days of good conduct time.

In an order dated July 23, 2004, I waived the requirement for exhausting administrative remedies. Waiving this requirement in a case brought under § 2241 is appropriate when the agency has predetermined the issue or when exhaustion would cause

an unreasonable delay. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). Both of these reasons are present in this case. (Although respondent argues that petitioner has not exhausted his administrative remedies under 42 U.S.C. § 1997e(a), I have concluded that § 1997e(a) does not apply to habeas corpus actions. Zapata v. Scibana, No. 04-C-306-C (W.D. Wis. July 9, 2004).) Further, I did not impose a stay as I have in other cases relying on White because petitioner may be eligible for immediate transfer to a halfway house if his good conduct time is recalculated in accordance with White. I directed respondent Joseph Scibana to show cause why the petition should not be granted.

In his response, respondent concedes that the legal issue in this case is controlled by White. He concedes also that petitioner is currently scheduled for release to a community corrections on September 8, 2004. Aff. of Diane Hedrich, dkt. #7, ¶13. Petitioner may be eligible for transfer earlier if his good conduct time is recalculated under White, which defendant admits would give petitioner an additional 56 days of good conduct time. 18 U.S.C. § 3624(c) (inmates should spend a reasonable part of their sentence learning to prepare for release); Monahan v. Winn, 276 F. Supp. 2d 196, 199 (D. Mass. 2003) (noting bureau's practice of placing inmates in halfway houses for last 6 months of their sentence). Accordingly, I will grant the petition and order respondent to recalculate petitioner's good

conduct time on the basis of his sentence.

ORDER

IT IS ORDERED that petitioner Keith Cade's petition for a writ of habeas corpus is GRANTED. Respondent Joseph Scibana is directed to recalculate petitioner's good conduct time on the basis of each year of his sentence rather than on time actually served.

Entered this 30th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge