

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

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GARY COLLINS,

Petitioner,

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.  
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ORDER

04-C-366-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 Gary Collins 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.

Generally, a petitioner must allege that he exhausted his administrative remedies

before a district court may consider a habeas corpus petition. Clemente v. Allen, 120 F.3d 703, 705 (7th Cir. 1997). Petitioner concedes that he has not exhausted all of his administrative remedies. However, as the Court of Appeals for the Seventh Circuit has reaffirmed recently, exhaustion of administrative remedies is not a prerequisite to every case brought under § 2241. Because exhaustion in a § 2241 case is not required by statute, district courts have discretion to excuse petitioners from using the administrative complaint process in limited circumstances. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). For example, exhaustion is not required if it would cause the petitioner “prejudice . . . due to an unreasonable delay or an indefinite time frame for administrative action.” Id. (quoting Iddir v. INS, 301 F.3d 492, 498 (7th Cir. 2002).)

In this case, petitioner alleges that if the bureau had calculated his good conduct time in accordance with White, his correct release date to a half-way house would be 200 days shorter than the August 2004 date presently scheduled. Thus, *any* delay will prejudice petitioner because every day that passes is an additional day that he may be being incarcerated illegally. Under these circumstances, I conclude that petitioner’s interest in seeking immediate relief in federal court outweighs any institutional interest in requiring complete exhaustion, particularly when petitioner has already been denied relief at two levels. Accordingly, respondent will be directed to show cause why this petition should not be granted. Because of the extremely time sensitive nature of the petition, I will require respondent to file his response no later than June 28, 2004.

ORDER

IT IS ORDERED that respondent may have until June 28, 2004, in which to show cause why this petition should not be granted on petitioner Gary Collins's claim that the Bureau of Prisons is calculating his good time credits in violation of 18 U.S.C. § 3624(b)(1).

Entered this 18th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge