

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

GARY COLLINS,

Petitioner,

ORDER

04-C-366-C

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.

Petitioner Gary Collins 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 an additional 200 days of good conduct time, making him eligible for a February 2005 release date and an August 2004 transfer to community confinement.

In an order dated June 18, 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). I directed respondent Joseph Scibana to show cause why the petition should not be granted. (In many cases raising the same issue as White, I have stayed the case pending a decision by the Court of Appeals for the Seventh Circuit in White. However, in Caldwell v. Scibana, 04-C-342-C (W.D. Wis. July 19, 2004), I concluded that I would not impose a stay in cases in which a prisoner would be entitled to imminent release or eligible for an imminent halfway house transfer after his good conduct time is recalculated in accordance with White.)

In his response, respondent concedes that the legal issue in this case is controlled by White. He concedes also that petitioner would be eligible for transfer to a halfway house on August 8, 2004 if his good conduct time were recalculated in accordance with White. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

Respondent asks for "time to identify and arrange for transfer of the petitioner to a suitable community correctional facility." Resp.'s Br., dkt. #3, at 5. Such an order is unnecessary. As I noted in Caldwell, I cannot order respondent to place an inmate in a halfway house on a particular date. 18 U.S.C. § 3624(c) gives the Bureau of Prisons discretion to determine whether and when an inmate should be placed in a halfway house. The scope of this case is limited to the question whether the Bureau of Prisons is calculating petitioner's good conduct time in accordance with § 3624(b). Thus, the order will be limited

to directing respondent to recalculate petitioner's good conduct time. Any request for additional relief is outside the scope of this case.

ORDER

IT IS ORDERED that petitioner Gary Collins'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 20th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge