

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

JASON LEWIS SAMELS,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-387-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 Jason Lewis Samels 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 the time that has passed since the Yancey White's petition was granted, several

other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons's method of calculating their good time credits. In an order dated June 4, 2004, I stayed the proceedings in most of these actions pending appointment of counsel in one of the cases, Perry v. Scibana, 04-C-332-C. An order appointing Michael Gonring, Emily Feinstein and Adrienne Olson as counsel in that case was entered on June 18, 2004. Counsel understand that their first task is to explore the propriety of moving for class certification. Notwithstanding the possibility that the issue can be resolved in the context of a class action, I have issued orders to show cause in three other cases, where it appeared clear that the petitioner's release date would occur before counsel could obtain relief in a class action were the petitioner's sentence to be recalculated in the manner prescribed in White. See, e.g. Zapata v. Scibana, 04-C-306-C.

Here, it is not possible to tell whether an order to show cause is warranted because petitioner's release date is imminent or whether an order to stay the action should be entered pending class certification. Petitioner alleges that he is entitled to 392 days of good time credit on his 87 month sentence. However, he does not say when he was sentenced.

ORDER

IT IS ORDERED that a STAY is imposed on the question whether the court should issue an order to show cause or enter a stay in this case pending class certification in the Perry case. Petitioner may have until July 9, 2004, in which to submit documentation

revealing the date of his sentence and his release date as it is presently calculated by the Bureau of Prisons. If petitioner fails to respond to this order by July 9, 2004, I will enter an order staying the action pending resolution of the question whether a class will be certified in Perry v. Scibana.

Entered this 22nd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge