

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

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241, in which petitioner alleges that the Bureau of Prisons is acting contrary to 18 U.S.C. 3624(b) by calculating his good conduct time on the basis of the actual time he has served rather than his imposed sentence. This issue is identical to the issue I decided in White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 2004), in which I concluded that the Bureau of Prisons was acting contrary to 18 U.S.C. 3624(b) by calculating good conduct time on the basis of the actual time served. Respondent Scibana has appealed that decision to the Court of Appeals for the Seventh Circuit and has requested expedited treatment of the appeal.

In an order entered in this case on June 22, 2004, I directed petitioner to supplement his petition for a writ of habeas corpus with documentation revealing the date of his sentence and his release date as it is presently calculated by the Bureau of Prisons. I advised

petitioner that this information was important to a determination whether he would be prejudiced if I imposed a stay in this action pending appointment of counsel and potential class certification in another case raising the same question, Perry v. Scibana, 04-C-332-C. Petitioner has responded to that order.

As an initial matter, I note that on June 23, 2004, I reconsidered the decision to appoint counsel in the Perry case after concluding that it might have been premature to invite a motion for class certification in that case. I noted that respondent Scibana has appealed White, and that once the court of appeals decides the case, no benefit can be gained from having a class action raising the identical claim in this court. I expressed my view that if the court of appeals affirms White, respondent will apply the decision to all Oxford prisoners, mooting their claims for habeas corpus relief. If the court reverses White, I will be bound by that decision and will have to deny relief to the petitioners who have filed identical claims. Nevertheless, I stated that I would issue orders to show cause in cases 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.

The documentation petitioner has submitted reveals that he was sentenced on January 9, 2004 to an 87-month term of imprisonment. His projected release date is August 27, 2009. Because petitioner's release date is not imminent, he will not be prejudiced if I stay issuance of an order to show cause until the Court of Appeals for the Seventh Circuit

decides the appeal in White.

ORDER

IT IS ORDERED that a STAY is imposed in this action pending disposition of the appeal in White v. Scibana, case no. 04-C-581-C.

Entered this 1st day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge