

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

CHARLES C. ISELY III,

Petitioner,

v.

JOSEPH SCIBANA,
Warden of Oxford Prison Camp,

Respondent.

ORDER

04-C-410-C

Petitioner Charles Isely 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.

Petitioner has paid the \$5 filing fee. I have waived the requirement to exhaust administrative remedies because doing so would be futile. See Gonzalez v. O'Connell, 355

F.3d 1010, 1016 (7th Cir. 2004) (exhaustion requirement may be waived in § 2241 case if agency has predetermined issue). Although I have stayed most cases raising this issue pending a decision by the Court of Appeals for the Seventh Circuit in White, I did not impose a stay in this case because petitioner's release date is imminent and any stay would cause him substantial prejudice.

In his response, respondent concedes that this case is controlled by White. Respondent concedes also that, under White, petitioner would be entitled to release on July 10, 2004. However, petitioner argues that he is entitled to release on July 9, 2004. Petitioner is serving a term of imprisonment of 1 year and 9 months; he is currently scheduled to be released on July 22, 2004. Under White, petitioner would be entitled to an additional 12.5 days. It appears that the parties disagree whether the bureau should round up or down when earned good conduct time results in a fraction of a day. I express no opinion on this issue. The issue in White was limited to whether § 3624(b) required good conduct time to be calculated on the basis of the inmate's sentence. The bureau's judgment on how to credit partially earned days is beyond the scope of this petition. In any event, respondent notes that this disagreement is of no consequence. Even if July 10 is the correct date, respondent will release petitioner on July 9 because July 10 is a Saturday. See 28 C.F.R. § 571.30 (if inmate's release date falls on Saturday, Sunday or legal holiday, bureau

may release inmate on “last preceding weekday”).

ORDER

IT IS ORDERED that petitioner Charles Isely’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 his sentence.

Entered this 9th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge