

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

WADE WHEAT,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-413-C

This is a petition for a writ of habeas corpus brought by petitioner, who is confined at the Federal Correctional Institution in Oxford, Wisconsin. In his petition, petitioner alleges that he will be forced to serve a longer duration of confinement because the Bureau of Prisons has computed his good time credits in a manner that is contrary to the dictates of 18 U.S.C. § 3624(b). I decided this precise question on its merits in White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 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).

In the time that has passed since the White decision was issued, several inmates at the Oxford institution have filed habeas corpus petitions seeking the relief granted in White. On June 4, 2004, in Perry v. Scibana, 04-C-332-C, I stayed a number of these individual actions, pending appointment of counsel who would be willing to investigate the propriety of moving for class certification.

Having considered the issue further, I have concluded that it may have been premature to invite a motion for class certification in Perry. Respondent has appealed White. However the court of appeals decides the case, it is likely to be the end of the matter. If the court affirms White, respondent should apply the decision to all Oxford prisoners without requiring individual orders for each inmate. If the court reverses White, I would be bound by that decision and could not grant relief to a class. In either event, the need for a class action will become moot. Petitioner's release date is sufficiently distant that he will not be prejudiced if he is required to wait for a determination by the Court of Appeals for the Seventh Circuit in White v. Scibana, No. 04-2410.

ORDER

IT IS ORDERED that the decision whether to issue an order to show cause in this action is STAYED pending a determination by the Court of Appeals for the Seventh Circuit

in White v. Scibana, No. 04-2410, unless otherwise ordered by this court.

Entered this 25th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge