

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

EUGENE SCHMITZ,

Petitioner,

v.

JOSEPH SCIBANA,
Warden, FCI-Oxford,

Respondent.

ORDER

04-C-414-C

Petitioner moves under Fed. R. Civ. P. 59 for reconsideration of the order dated July 1, 2004, dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2241. In that order, I concluded that petitioner is not entitled to a recalculation of his good conduct time under White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), because 18 U.S.C. § 3624 allows inmates to accumulate good conduct time only if they are serving sentences of more than one year. Currently, petitioner is serving a four-month sentence as a result of a revocation of his supervised release.

In his motion, petitioner argues that he is not challenging his good conduct time calculation with respect to his supervised release revocation but the 60-month term of

imprisonment that he served before he was placed on supervised release. However, petitioner has already completed the 60-month sentence and is now serving a new one. He points to no authority that would allow this court to either treat the two sentences as one or order the bureau to remedy a past erroneous calculation by making up the difference on a new sentence. United States v. Johnson, 529 U.S. 53 (2000) (length of supervised release term is not reduced by reason of excess time served in prison). Petitioner's motion for reconsideration is DENIED. Petitioner has 60 days from the date of this order in which to file a notice of appeal.

Entered this 9th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge