IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD HENDERSHOT,

	ORDER
Petitioner,	
	04-C-415-C
v.	

JOSEPH SCIBANA , Warden of
Oxford Prison Camp,

                    Respondent.

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Petitioner Richard Hendershot is a prisoner at the Federal Prison Camp 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. He alleges that, under White, he is entitled to additional days of good conduct time.

In an order dated September 3, 2004, I waived the requirement for exhausting administrative remedies because any delay in granting relief could cause petitioner

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substantial prejudice. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). In addition, waiving the exhaustion requirement is appropriate in this case because respondent and the bureau have predetermined the issue. Id. Further, I lifted the stay that was imposed on June 23, 2004, because petitioner may soon be eligible for transfer to a halfway house if his good conduct time is recalculated in accordance with White. I directed petitioner to initiate prompt service of his petition on the respondent and to submit proof of service as soon as he had obtained it. In addition, I provided the United States Attorney for the Western District of Wisconsin with a courtesy copy of petitioner's petition and directed that respondent Joseph Scibana respond to the petition no later than September 14, 2004.

Now respondent has filed a response to the petition. Although the court has not yet received petitioner's proof of service of his petition on the respondent, respondent concedes in his response that he received a copy of petitioner's petition on September 10, 2004 by certified mail as required by Fed. R. Civ. P. 4(i). Therefore, this case is ready for a decision on the merits.

In his response, respondent concedes that the legal issue in this case is controlled by White. He states that petitioner was sentenced to serve a 48-month term of imprisonment beginning October 10, 2001. Under the Bureau of Prisons' current calculation of petitioner's good conduct time, he is projected for release on April 3, 2005, and transfer to a halfway house on or about November 30, 2004. If petitioner's good conduct time is

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recalculated in accordance with <u>White</u>, he will be entitled to release approximately 28 days earlier and his eligibility for transfer to a community corrections center may be similarly adjusted. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

I emphasize, however, that I cannot order respondent to place petitioner in a halfway house on a particular date. Under 18 U.S.C. § 3624(c), the Bureau of Prisons is required, when it is "practicable," to allow inmates to spend a "reasonable part" of their sentence learning to prepare for release. However, the statute grants the bureau discretion to decide how the inmate is to be prepared for release and how much time the inmate needs to prepare. Although it appears that the bureau's practice is to transfer most inmates to halfway houses for the last six months of their sentence, <u>Monahan v. Winn</u>, 276 F. Supp. 2d 196, 199 (D. Mass. 2003), this practice is not required by statute. Therefore, I express no opinion on the question whether or when petitioner should be transferred to a halfway house.

ORDER

IT IS ORDERED that petitioner Richard Hendershot'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 each year of his sentence rather than on time actually served.

Entered this 15th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge