

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

RUSSELL ANDERSON,

Petitioner,

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.

ORDER

04-C-421-C

On July 1, 2004, I stayed a decision whether to issue an order to show cause or enter a stay in this case pending a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White v. Scibana, 03-C-581. I gave petitioner until July 9, 2004, in which to submit documentation revealing his release date as it is presently calculated by the Bureau of Prisons. I told petitioner that if his documentation were to show that his release date would occur before the Court of Appeals for the Seventh Circuit could decide White, I would not impose a stay pending resolution of the appeal.

Now I have decided in Caldwell v. Scibana, 04-C-342-C, (copy attached), that I will not impose a stay in cases raising the claim raised in White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 2004), if: (1) the petitioner submits a sentence computation from the Bureau of Prisons showing the inmate's term of imprisonment, good conduct time that has been

both earned and disallowed, current release date and pre-release preparation date; and (2) I can conclude on the basis of that information that the petitioner would be entitled to imminent release or eligible for an imminent halfway house placement after his good conduct time is recalculated in accordance with White.

On July 8, 2004, petitioner submitted the documentation requested in the July 1 order. His sentence monitoring computation data sheet shows that he was sentenced on November 24, 1997 to a term of 121 months of imprisonment. Under the Bureau's current computation of petitioner's good time credits at 474 days, his projected release date is January 25, 2005, and his projected "six month/10% date" is July 25, 2004. A "program review report" attached to petitioner's computation sheet shows that petitioner has been approved for release to a community corrections facility in Honolulu, HI on July 29, 2004. If petitioner's good conduct time were to be recalculated in accordance with White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 2004), his projected release date would be shortened by approximately 70 days, to mid-November, 2004. By then, it is expected that the Court of Appeals for the Seventh Circuit will have had a chance to decide the appeal that has been filed in White. Because it appears that petitioner will have been released to a halfway house by the time he will receive this order, he does not stand to lose any immediate or imminent benefit by imposition of a stay.

ORDER

IT IS ORDERED that the stay imposed in this case on July 1, 2004 is LIFTED. However, a new stay is imposed pending a determination by the Court of Appeals for the Seventh Circuit of the appeal in White v. Scibana, No. 04-2410, unless otherwise ordered by this court.

Entered this 20th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge