

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

TIMOTHY M. TONKOVICH,

ORDER

Petitioner,

04-C-450-C

v.

JOSEPH SCIBANA,

Respondent.

Petitioner Timothy Tonkovich 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. He alleges that, under White, he is entitled to an additional 9 days of good conduct time.

In an order dated July 9, 2004, I waived the requirement for exhausting administrative remedies. Waiving this requirement in a case brought under § 2241 is

appropriate when the agency has predetermined the issue or when exhaustion would cause an unreasonable delay. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). Further, I did not impose a stay as I have in other cases relying on White because petitioner's recalculated release date will arrive before the Court of Appeals for the Seventh Circuit is likely to decide the White appeal. I directed respondent Joseph Scibana to show cause why the petition should not be granted.

In his response, respondent concedes that the legal issue in this case is controlled by White. He concedes also that petitioner will be entitled to release on August 30, 2004 if his good conduct time were recalculated in accordance with White. Although respondent argues that petitioner has not exhausted his administrative remedies under 42 U.S.C. § 1997e(a), I have concluded that § 1997e(a) does not apply to habeas corpus actions. Zapata v. Scibana, No. 04-C-306-C, slip op. July 9, 2004 (W.D. Wis. 2004). Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

ORDER

IT IS ORDERED that petitioner Timothy Tonkovich'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 21st day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge