

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

BRANDON ROBERT FRY,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-457-C

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).

Like White, petitioner Brandon Robert Fry is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. His petition under § 2241 raises the same issue as that in White: he alleges that the bureau is calculating his good conduct time on the basis of time served rather than the sentence imposed. Petitioner has paid the \$5 filing fee. Although

petitioner does not allege that he has exhausted his administrative remedies, I will waive this requirement because seeking administrative relief would cause an unreasonable delay. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004).

In an order dated July 14, 2004, I ordered respondent Scibana to show cause why the petition should not be granted. In his response, respondent concedes that the legal issue in this case is identical to that in White. In addition, he concedes that petitioner is entitled to release *now* if the method for calculating good conduct time affirmed in White is employed. Resp.'s Br., dkt. #3 at 3 ("Using the White method of calculating GCT, the BOP also computes a release date for the petitioner of July 5, 2004."). Accordingly, the petition will be granted.

ORDER

IT IS ORDERED petitioner Brandon Robert Fry's petition for a writ of habeas corpus is GRANTED. Respondent Joseph Scibana is directed to release petitioner from the Federal

Correction Institution immediately.

Entered this 19th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge