

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

EDWARD J. PIECHOCKI,

ORDER

Petitioner,

04-C-466-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

In an order dated August 9, 2004, I granted petitioner Edward Piechocki's petition for a writ of habeas corpus brought under 28 U.S.C. § 2241 and directed the Federal Bureau of Prisons to recalculate his good conduct time in accordance with White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004). Judgment was entered on August 11, 2004. Subsequently, respondent filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 60(b)(5) and then moved to stay execution of the sentence pending a ruling on the Rule 60 motion. I granted the motion to stay execution of petitioner's sentence on December 27, 2004. Now before the court is respondent's Rule 60 motion, which will be denied as moot.

Fed. R. Civ. P. 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

* * *

(5) the judgment has been satisfied, released, or discharged, or a proper judgment upon which it is based has been reversed or otherwise vacated

The legal decision I relied upon in ruling in petitioner's favor in this case has been reversed by the Court of Appeals for the Seventh Circuit. See White v. Scibana, 390 F.3d 997 (7th Cir. 2004) (Bureau of Prisons' interpretation of statutes governing calculation of good-time credit entitled to deference), reh'g en banc denied Feb. 9, 2005. The mandate is expected to issue within 7 calendar days of the date petitioner's petition for rehearing was denied, although an order staying issuance of the mandate for 90 days may be granted if petitioner shows good cause for a stay pending a challenge to the decision of the court of appeals in the United States Supreme Court. Fed. R. App. P. 41(b) and (d)(2). Nevertheless, even if the Supreme Court were to grant petitioner's petition for a writ of certiorari and take the issue under consideration, petitioner Piechocki can no longer benefit from the Court's favorable ruling on the merits of the case, if one were to be made, because the issue became moot as to him on February 12, 2005. This is the date petitioner Piechocki was projected for release under the Bureau's method for calculating his good time.

Thus, despite the fact that the court of appeals has overturned the White decision,

and the fact that that decision governs the issue raised in petitioner Piechocki's case, it is unnecessary to vacate the judgment entered in this case on August 11, 2004, because the matter is moot.

ORDER

IT IS ORDERED that respondent's motion pursuant to Fed. R. Civ. P. 60(b)(5) to alter or amend the judgment entered in this case on August 11, 2004 is DENIED as moot.

Entered this 15th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge