

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

CHARLES HENRY HOLMES,

ORDER

Petitioner,

04-C-479-C

v.

JOSEPH SCIBANA, Warden,

Respondent.

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). Respondent has appealed that decision and the Court of Appeals for the Seventh Circuit has granted respondent's motion for expedited treatment of the appeal and directed that oral argument be scheduled during the month of September.

Petitioner Charles Henry Holmes 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.

In the time that has passed since the Yancey White's petition was granted, several other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons' method of calculating their good time credits. I have stayed the proceedings in most of these actions pending a decision on the appeal filed in White's case. I have decided to issue orders to show cause 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 transfer after his good conduct time is recalculated in accordance with White.

In this case, it appears from petitioner's allegations that his release date is not imminent and that a stay of the proceedings is warranted. The Bureau of Prisons sentence computation sheet attached to petitioner's petition shows that petitioner was sentenced on February 17, 2000 to a 77-month term of imprisonment. The Bureau of Prisons has calculated his good conduct time to be 301 days and projected his release date as February 12, 2005. If the Bureau recalculates petitioner's release date in accordance with White, petitioner will be entitled to release 45 days earlier, in January 2005. I am satisfied that petitioner's release date is not so immediate that he will be prejudiced by a stay of the proceedings pending the court of appeals's decision in White.

ORDER

IT IS ORDERED that this petition for a writ of habeas corpus is STAYED pending

a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White
v. Scibana, 03-C-581.

Entered this 21st day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge