

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

ADAM LEE DEWANE,

ORDER

Petitioner,

04-C-481-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 Adam Lee Dewane 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, the documentation attached to petitioner's petition is incomplete. It does not show when petitioner was sentenced or what length of sentence he is serving. It does show a "current release date" of July 19, 2006 and a "projected satisfaction date" of August 15, 2005, as well as earned and projected good conduct time amounting to 392 days. I assume that the August 15, 2005 "satisfaction" date is the date that the Bureau of Prisons is projecting that petitioner will be released if he receives all 392 days of his projected good conduct time under the Bureau's present method of calculating good time.

For the purpose of this order only, I accept petitioner's allegation in his petition that he was sentenced to a term of imprisonment of 100 months. This means that if petitioner's

good time credit is recalculated in accordance with White, he would be entitled to 450 days of good conduct time instead of 392 days. That would result in a projected release date 58 days earlier than August 15, 2005, or June 18, 2005. Even if petitioner is eligible for release to a halfway house six months earlier, in January 2005, neither date will occur before the court of appeals can decide the White appeal. Therefore, I conclude that petitioner will not be irreparably harmed if he is forced to wait until the court of appeals decides White before he can obtain a ruling in his case.

ORDER

IT IS ORDERED that all proceedings in this action are STAYED 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 21st day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge