

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

NATHANIEL KINNARD,

ORDER

Petitioner,

04-C-510-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 Nathaniel Kinnard 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, petitioner has not submitted documentation with his petition. (Petitioner has attached a document marked "Encl 6," which petitioner contends will prove how the Bureau of Prisons is presently computing his good conduct time. However, "Encl 6" is simply an administrative remedy receipt. It does not show petitioner's earned and disallowed good conduct time, his current release date or his pre-release preparation date.) However, he alleges facts that, if corroborated by documentation, suggests that he may be eligible for an imminent halfway house transfer and that he would be prejudiced by a stay of the proceedings.

Petitioner alleges that he was committed to the custody of the Bureau of Prisons on

June 24, 2003, to serve an 18-month sentence, that his projected pre-release date under the Bureau of Prisons' method of calculating good conduct time is September 1, 2004, and that if his good time credit is recalculated in accordance with White, he will be eligible for release to a halfway house on August 22, 2004. If petitioner were to submit the required Bureau of Prisons documentation, I would conclude that he will 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 a decision is STAYED on the question whether an order to show cause should issue immediately in this petition for a writ of habeas corpus. Petitioner may have until August 4, 2004, in which to submit a sentence computation from the Bureau of Prisons showing his term of imprisonment, good conduct time that has been both earned and disallowed, current release date and pre-release preparation date. If, by August 4, 2004, petitioner fails to submit the required documentation, I will enter an order

staying all proceedings in this action pending a decision on the appeal filed in the White case.

Entered this 26th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge