

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

JESUS RUIZ-ESPARZA,

ORDER

Petitioner,

04-C-529-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 heard oral argument on the appeal on September 9, 2004.

Petitioner Jesus Ruiz-Esparza 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 asserted in an unverified petition that he was sentenced to a term of 42 months on March 29, 2002 and that he has been in federal custody since August 22, 2001. The only information that can be obtained from the Bureau of Prisons' "Sentence Monitoring Good Time Data" sheet that he submitted with his petition is that, as of July 11, 2004, the Bureau of Prisons projects his release date to be November 3, 2004, if he were to earn projected good time credits of 107 days. Nevertheless, because the assertions in petitioner's petition are not verified, that is, declared to be true under penalty of perjury, as it is required to be pursuant to 28 U.S.C. § 2242, I cannot rely on his unverified statements concerning his sentence in determining whether to issue an order to show cause in this case. For example, although I have no reason to doubt petitioner's

assertion that he was sentenced to a 42-month term of imprisonment, I cannot accept the statement as true for the purpose of determining whether petitioner's sentence is a sentence toward which good conduct time may be credited under 18 U.S.C. 3624(b).

ORDER

IT IS ORDERED that a STAY is imposed on the question whether the court should issue an order to show cause or enter a stay in this case pending resolution of the appeal in White v. Scibana, No. 04-2410. Petitioner may have until September 30, 2004, in which to submit documentation revealing the date he was sentenced, his term of imprisonment, any good conduct time that has been earned and disallowed, and his current release and pre-release preparation dates as they are presently calculated by the Bureau of Prisons. In addition, petitioner must submit a copy of his petition that has been verified in accordance with 28 U.S.C. § 2242. If petitioner fails to respond to this order by September 30, 2004, or show cause for his failure to do so, I will dismiss the petition for petitioner's failure to conform his petition to the form of pleadings required of habeas corpus petitions brought

pursuant to 28 U.S.C. § 2241 and his failure to show that he is in custody in violation of the constitution or laws of the United States.

Entered this 15th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge