

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

THOMAS E. SIMMONS, JR.,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-559-C

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 Thomas E. Simmons 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. However, I note that

petitioner's petition is not verified to be true under penalty of perjury as 28 U.S.C. § 2242 requires. Therefore, petitioner must cure this defect in his pleading before I can make any final ruling in this action.

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 that petitioner already has been released to a halfway house and that he will not be prejudiced by a stay of the proceedings. The documentation attached to petitioner's petition reveals that petitioner was committed to the custody of the Bureau of Prisons on August 4, 2003 to serve a 54-month sentence. His projected release date under the Bureau of Prisons' method of calculating good conduct time is February 8, 2005. If petitioner's good time credit is recalculated in accordance with White, he may be eligible for release approximately 31 days earlier. However, petitioner's documentation shows also that

petitioner was being considered for placement in a community corrections center as early as August 10, 2004. A check of the Bureau of Prisons Inmate Locator website on the Internet reveals that petitioner had been transferred to a halfway house in Kansas City, Kansas. A deputy clerk in this court has confirmed by telephone that petitioner was received at the Kansas City halfway house on August 17, 2004. 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 this case.

Petitioner should be aware that his transfer does not deprive this court of jurisdiction to hear his petition. Ross v. Mebane, 536 F.2d 1199 (7th Cir. 1976) (jurisdiction attaches at time of filing). His petition was filed on August 9, 2004, which appears to be at least 10 days before his transfer. However, I will remind petitioner that now that he is transferred, it is his responsibility to advise the court and respondent's counsel of his whereabouts. His failure to keep the court and opposing counsel apprised of his address is sufficient ground to dismiss his petition for failure to prosecute.

ORDER

IT IS ORDERED that petitioner may have until September 30, 2004, in which to submit a copy of his habeas corpus petition that has been verified to be true under penalty of perjury.

Further, IT IS ORDERED that a STAY is imposed in this action pending disposition

of the appeal in White v. Scibana, No. 04-2410.

Entered this 14th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge