

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

MARIO YOUNG,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-585-C

Petitioner Mario Young is a prisoner at the Federal Correctional Institution Camp in Oxford, Wisconsin. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner contends that the Federal Bureau of Prisons is calculating his good conduct time erroneously. He relies on White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), in which I concluded that 18 U.S.C. § 3624(b) required the bureau to calculate good conduct time on the basis of the inmate's imposed sentence rather than the actual time he had served.

On August 24, 2004, I stayed a decision whether to issue an order to show cause or enter a stay in this case pending a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White. I gave petitioner until September 6, 2004, in which to submit documentation revealing his pre-release and release dates as they are presently calculated by

the Bureau of Prisons.

On August 27, 2004, petitioner submitted the documentation requested in the August 24 order. That documentation revealed that if petitioner's good conduct time were to be recalculated in accordance with White, his projected release date would be shortened by approximately 14 days to early December and his eligibility for pre-release may be moved to an earlier date as well. Therefore, in an order dated September 1, 2004, I directed respondent Joseph Scibana to show cause why the petition should not be granted. In the same order, I waived the requirement that petitioner exhaust his administrative remedies, because any delay in granting relief could cause petitioner substantial prejudice and because respondent and the bureau have predetermined the issue. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004). In addition, I told petitioner that it was his responsibility to serve the respondent formally with his petition pursuant to Fed. R. Civ. P. 4(l), and to submit proof of service to the court as promptly as possible.

Now respondent has filed his response to the petition and petitioner has submitted proof that he has served respondent with his petition, rendering the case ready for a decision on the merits of the petition.

In his response, respondent concedes that the legal issue in this case is controlled by White. In addition, respondent concedes that petitioner is presently scheduled to be released on December 21, 2004 and that he is eligible for release to a halfway house on October 20, 2004 and that if his good conduct time is recalculated in accordance with

White, he will be eligible for release approximately 14 days earlier. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

I emphasize, however, that I cannot order respondent to place petitioner in a halfway house on a particular date. Under 18 U.S.C. § 3624(c), the Bureau of Prisons is required, when it is "practicable," to allow inmates to spend a "reasonable part" of their sentence learning to prepare for release. However, the statute grants the bureau discretion to decide how the inmate is to be prepared for release and how much time the inmate needs to prepare. Although it appears that the bureau's practice is to transfer most inmates to halfway houses for the last six months of their sentence, Monahan v. Winn, 276 F. Supp. 2d 196, 199 (D. Mass. 2003), this practice is not required by statute. Therefore, I express no opinion on the question whether or when petitioner should be transferred to a halfway house.

ORDER

IT IS ORDERED that petitioner Mario Young's petition for a writ of habeas corpus is GRANTED. Respondent Joseph Scibana is directed to recalculate petitioner's good

conduct time on the basis of each year of his sentence rather than on time actually served.

Entered this 21st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge