

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

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ANTONIO DIAZ,

ORDER

Petitioner,

04-C-651-C

v.

JOSEPH SCIBANA, Warden of  
Oxford Prison Camp,

Respondent.  
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Petitioner Antonio Diaz is a prisoner at the Federal Prison 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.

From the documentation petitioner submitted with his petition, I concluded that petitioner's pre-release date is imminent and that he would be prejudiced by a stay of the proceedings. The documentation reveals that petitioner was committed to the custody of the Bureau of Prisons on November 27, 2001 to serve a 43-month sentence. His projected

pre-release date under the Bureau of Prisons' method of calculating good conduct time is October 3, 2004. If his good time credit is recalculated in accordance with White, he may be eligible for release to a halfway house approximately 24 days earlier. Therefore, in an order dated September 8, 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 on September 13, 2004, he served his petition by certified mail on Attorney General John Ashcroft and the United States Attorney for the Western District of Wisconsin, and that on the same date, he attempted to serve his petition by certified mail on respondent Joseph Scibana. However, petitioner also has submitted an empty envelope addressed to respondent Scibana bearing \$3.33 in stamps and a certified mail receipt that has not been executed. The envelope is stamped with a notation that reads:

Federal Correctional Institution, Oxford, WI 63962 [illegible]

Date: 9/13/04

The enclosed letter was processed through special mailing procedures for

forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return enclosures to the above address.

In a cover letter accompanying this material, petitioner states that the package addressed to respondent Scibana was rejected for mailing because petitioner used envelope labels to address the mail and to show his return address. Because the envelope is void of its contents, the clerk of court has inquired of the United States Attorney's office whether respondent Scibana was served with petitioner's petition. Counsel has advised this court that respondent Scibana received a copy of petitioner's petition through the prison's internal mail.

Service of process by prison internal mail is not an option available under Fed. R. Civ. P. 4(l). Nevertheless, given the urgency of this petition, petitioner's clear attempt to comply with Rule 4, respondent's own staff's interference with the mailing and counsel's concession that respondent Scibana has a copy of petitioner's petition in his possession, I will assume that respondent Scibana does not object to the sufficiency of service of process upon him. Accordingly, I consider this case ready for a decision on the merits of the petition.

In his response, respondent concedes that petitioner was sentenced to a 43-month term of imprisonment beginning November 27, 2001, that he is presently projected for release on January 26, 2005, and that he is eligible for release to a halfway house on October 6, 2004. If petitioner's good conduct time is recalculated in accordance with

White, he will be eligible for release approximately 21 days earlier, and may be similarly eligible for earlier pre-release. 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 Antonio Diaz'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 27th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge