IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GREGORY J. MISFELDT,   ORDER

                              Petitioner,   04-C-696-C

              v.

JOSEPH SCIBANA, Warden of
Oxford Prison Camp,

                              Respondent.

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In <u>White v. Scibana</u>, 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. Oral

argument was heard on September 9, 2004, and a decision may be forthcoming before the

end of this year.

Petitioner Gregory J. Misfeldt is an inmate at the Federal Prison Camp 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, it appears from the documentation petitioner submitted with his petition that he is serving a sentence of one year and one day and is presently scheduled for release on December 3, 2004, assuming he earns all 47 days of good time that the Bureau of Prisons is projecting he will earn. If his good time is recalculated in accordance with White, he will be eligible for release approximately 7 days earlier. I conclude that petitioner 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.

However, although I have no reason to doubt the accuracy of the documentation petitioner submitted with his petition, 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.

Petitioner alleges that he has exhausted his administrative remedies. Even if he had not, I would waive this requirement because any delay in receiving relief will cause petitioner substantial prejudice and because the Bureau of Prisons has predetermined the issue. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (court may waive exhaustion requirements for § 2241 to prevent prejudice caused by unreasonable delay or when agency has predetermined issue). Accordingly, respondent will be directed to show cause why this petition should not be granted.

Petitioner should note that because he is not proceeding in forma pauperis, it is his obligation to serve the petition on the respondent. Pursuant to Fed. R. Civ. P. 81, the rules governing service of process in civil actions are applicable to this proceeding because no specific rules governing service of process in § 2241 habeas corpus actions exist elsewhere in a statute or in the Rules Governing Section 2254 and 2255 cases.

When he filed his petition, petitioner submitted a certificate of service signed by Kathy Misfeldt in which Ms. Misfeldt certifies that she mailed a copy of petitioner's petition to respondent Scibana and the United States Attorney's Office in Madison. However, the rule governing service of process in civil actions brought against a federal official in his

official capacity is Fed. R. Civ. P. 4(i). According to this rule, petitioner's petition must be sent with a copy of this court's order *by certified mail* to: 1) the respondent; 2) the United States Attorney for the Western District of Wisconsin; and 3) the Attorney General in Washington, D.C. The address for the United States Attorney in this district is: The Hon. J.B. Van Hollen, 660 W. Washington Ave., Madison, WI, 53703. The address for the Attorney General in Washington, D.C. is: The Hon. John Ashcroft, United States Attorney General, 950 Pennsylvania Ave., N.W., Rm. 5111, Washington, DC 20530. Enclosed to petitioner with a copy of this order are the extra copies of his petition and this court's order. As noted above, petitioner will have to verify his petition before he serves it on the respondents. Pursuant to Fed. R. Civ. P. 4(l), petitioner is requested to submit proof to the court that he served his petition by certified mail. A copy of the postmarked certified mail receipt for each of the individuals to whom the petition was sent will constitute proof of service.

ORDER

IT IS ORDERED that no later than October 15, 2004, petitioner is to submit a verified copy of his habeas corpus petition for filing in this case, and proof of service of the verified petition upon the respondents as soon as he has it.

Further, IT IS ORDERED that respondent may have until October 22, 2004, in which to show cause why this petition for a writ of habeas corpus should not be granted on

petitioner's claim that the Bureau of Prisons is calculating his good time credits in violation

of 18 U.S.C. § 3624(b)(1).   There is no need for a traverse.

Entered this 30th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge