

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

DAVID L. CALDWELL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-723-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 has granted respondent's motion for expedited treatment of the appeal. Oral argument was heard on September 9, 2004, and a final decision is expected before the end of this year.

Like White, David Caldwell 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's 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 attached to petitioner's petition that neither his release nor pre-release date is imminent and that a stay of the proceedings is warranted. The Bureau of Prisons sentence computation sheet attached to petitioner's petition shows that petitioner was sentenced on September 16, 1999 to a 121-month term of imprisonment. The Bureau of Prisons has projected his good conduct time to be 474

days, his release date to be August 8, 2007, and his pre-release date to be February 8, 2007. If the Bureau recalculates petitioner's release date in accordance with White, petitioner will be entitled to release approximately 70 days earlier, and his pre-release date may be similarly advanced. I am satisfied that neither petitioner's release date nor his pre-release date is so immediate that he will be prejudiced by a stay of the proceedings pending the court of appeals's decision in White.

ORDER

IT IS ORDERED that petitioner may have until October 18, 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 this petition for a writ of habeas corpus is STAYED pending a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White v. Scibana, 03-C-581.

Entered this 4th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge