

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

HUGO A. BERMUDEZ-CRUZ,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-731-C

Petitioner Hugo Bermudez-Cruz is an inmate at the Federal Correctional Institution 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.

In an order entered on October 4, 2004, I directed respondent to show cause why petitioner's petition should not be granted. In addition, I noted that petitioner's petition had not been verified as required under 28 U.S.C. § 2242 and I directed petitioner to cure this defect.

On October 14, 2004, petitioner submitted a verified copy of his petition, together with proof of service of the petition upon the respondent. Respondent has now filed his response to the petition.

In his response, respondent notes that petitioner has not exhausted his administrative remedies as he is required to do under Sanchez v. Miller, 792 F.2d 694, 699 (7th Cir. 1986). However, in the October 4, 2004 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). Therefore, I will consider petitioner's petition on its merits.

From the documentation petitioner submitted with his petition and from the response, I find that petitioner was sentenced on February 5, 2001 to a 57-month term of imprisonment. Under the Bureau of Prisons' method of calculating petitioner's good conduct time, petitioner is scheduled for release on November 20, 2004. If his good time credit is recalculated in accordance with White, he will be eligible for release approximately 32 days earlier. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

ORDER

IT IS ORDERED that petitioner Hugo A. Bermudez-Cruz'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 22nd day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge