IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PAUL TAPPER,

Petitioner,

ORDER

04-C-770-C

v.

JOSEPH SCIBANA,
Warden, Oxford Prison Camp,

Respondent.

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On October 18, 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 v. Scibana, 03-C-581. I gave petitioner until October 28, 2004, in which to submit a copy of his petition that has been signed and verified in accordance with 28 U.S.C. § 2242, as well as documentation revealing the date he was sentenced, his term of imprisonment and his current release and pre-release preparation dates as they are presently calculated by the Bureau of Prisons. I told petitioner that if his documentation were to show that he would be entitled to imminent release or eligible for an imminent halfway house placement after his good conduct time is recalculated in accordance with White, I would not impose a stay pending resolution of the appeal.

Now petitioner has submitted a verified petition and the documentation requested in the October 18 order. His sentence monitoring computation data sheet shows that he was sentenced on December 13, 2001 to a 44-month term of imprisonment. Under the Bureau's current computation of petitioner's projected good time credits at 172 days, his projected release date is March 21, 2005, and his projected pre-release date is November 26, 2004. If petitioner's good conduct time were to be recalculated in accordance with White v. Scibana, 314 F. Supp.2d 834 (W.D. Wis. 2004), his projected release date would be shortened by approximately 25 days and his pre-release date may be similarly advanced. 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.

Petitioner does not allege that he has exhausted his administrative remedies. Nevertheless, I will waive this requirement because any delay in receiving relief will cause petitioner substantial prejudice. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (court may waive exhaustion requirements for § 2241 when necessary to prevent prejudice caused by unreasonable delay). 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. 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, which I construe to include his recent submission, 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. Petitioner is to file proof of service of his petition as directed above as soon as he has it. A copy of the posted certified mail receipts petitioner receives at the time he mails his petition to the respondent, the United States Attorney and the Attorney General will constitute proof of service. No final decision will be rendered in this case until such proof of service is received by the court.

ORDER

IT IS ORDERED that petitioner is to file as promptly as possible proof of service of his petition on the respondent, United States Attorney for the Western District of Wisconsin and Attorney General in Washington, D.C.

Further, IT IS ORDERED that respondent may have until November 10, 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 27th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge