

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

JOHN JULIAN HERNANDEZ, SR.,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-800-C

Petitioner John Julian Hernandez, Sr. is a prisoner 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.

From the documentation petitioner submitted with his petition, I concluded that petitioner's pre-release date may be imminent if his release date is recalculated in accordance with White. Therefore, in an order dated November 1, 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 no later than November 16, 2004.

Now respondent has filed his response to the petition. However, petitioner has not yet submitted proof that he served his petition by certified mail on respondent. Petitioner appears not to be aware that I cannot rule on his petition until the record reflects that respondent has been served with the petition in accordance with Fed. R. Civ. P. 4 or that respondent has waived proper service of process. At this time, the record is silent on these matters.

ORDER

IT IS ORDERED that petitioner may have an enlargement of time to December 3, 2004, in which to submit proof of service of his petition on respondent OR a stipulation from respondent's counsel that respondent waives service of process. If, by December 3, 2004, petitioner fails to respond to this order, then I will dismiss this petition for petitioner's

failure to prosecute it.

Entered this 23rd day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge