

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 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 November 1, 2004, I directed respondent to show cause why petitioner's petition should not be granted. In addition, I asked petitioner to submit proof that he served his petition on the respondent no later than November 16, 2004. On November 26, 2004, petitioner filed proof of service of his petition upon the

respondent.

Respondent has filed a response to the petition as directed. In the 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 November 1, 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.

In the response, respondent states that petitioner was sentenced on June 13, 2002, to a 48-month term of imprisonment. Under the Bureau of Prisons' method of calculating petitioner's good conduct time, petitioner is projected for release on July 26, 2005 and prerelease on January 27, 2005. If his good time credit is recalculated in accordance with White, he will be eligible for release approximately 28 days earlier, and his prerelease date may be similarly adjusted. Accordingly, I will grant the petition and order respondent to recalculate petitioner's good conduct time on the basis of his sentence.

I emphasize, however, that I cannot order respondent to place petitioner in a halfway house on a particular date. Under 18 U.S.C. § 3624(c), the Bureau of Prisons is required, when it is "practicable," to allow inmates to spend a "reasonable part" of their sentence

learning to prepare for release. However, the statute grants the bureau discretion to decide how the inmate is to be prepared for release and how much time the inmate needs to prepare. Therefore, I express no opinion on the question whether or when petitioner should be transferred to a halfway house.

ORDER

IT IS ORDERED that petitioner John Julian Hernandez, Jr.'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 29th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge