

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

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STEVEN J. FAIRFIELD,

Petitioner,

v.

JOSEPH SCIBANA, Warden,  
Federal Correctional Institution at  
Oxford, Wisconsin,

Respondent.  
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ORDER

04-C-812-C

In an order dated November 4, 2004, I directed petitioner to submit documentation from the Bureau of Prisons of his earned and disallowed good conduct time and his current release and pre-release preparation dates so that I could determine whether to issue an order to show cause in this habeas corpus action raising the claim raised in White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004). I told petitioner that I would issue an order to show cause if (1) he submitted a sentence computation from the Bureau of Prisons showing his term of imprisonment, good conduct time that has been both earned and disallowed, current release date and pre-release preparation date; and (2) I could 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. Petitioner has complied with the November 4 order. I am considering his documentation as an addendum to the habeas corpus petition.

The documentation petitioner has submitted shows that on January 9, 2001, petitioner was sentenced to a 66-month term of imprisonment. The Bureau of Prisons presently projects petitioner's release date to be June 29, 2005, if he is awarded 258 days of projected and earned good conduct time. The documentation shows also that petitioner is presently projected for release to a halfway house on or around January 7, 2005. If petitioner's good conduct time were to be recalculated in accordance with White, his projected release would be shortened by approximately 39 days, which may render him eligible for pre-release to a half way house in late December 2004. In his petition, petitioner alleges that he has exhausted his administrative remedies.

Although the Court of Appeals for the Seventh Circuit has agreed to give the White appeal expedited treatment, it may not rule on the matter until the end of this year. Petitioner's potential pre-release date falls within this time frame. If the court of appeals were to rule in late December that this court erred in deciding White, then petitioner would suffer no prejudice by leaving the stay in place. However, if this court's decision were to be upheld, there would be insufficient time to resolve this petition in petitioner's favor and give respondent an opportunity to adjust petitioner's pre-release date if it wished to do so. Therefore, I will order respondent to show cause why petitioner's petition for a writ of habeas corpus 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.

Fed. R. Civ. P. 4(i) governs service of process in civil actions brought against a federal official in his official capacity. According to this rule, petitioner's petition 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 (which includes the addendum) and this court's order. Pursuant to Fed. R. Civ. P. 4(l), petitioner is to submit proof to the court that he served his petition by certified mail. A copy of the postmarked certified mail receipt for each of the individuals to whom the petition was sent will constitute proof of service.

ORDER

IT IS ORDERED that no later than November 26, 2004, petitioner is to submit proof of service of his petition upon the respondents.

Further, IT IS ORDERED that respondent may have until November 26, 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 18th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge