

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

DONALD SIMMS,

ORDER

Petitioner,

04-C-825-C

v.

WARDEN SCIBANA, F.C.I. Oxford,

Respondent.

In White v. Scibana, 314 F. Supp. 2d 834 (W.D. Wis. 2004), I concluded that the Bureau of Prisons was acting contrary to 18 U.S.C. § 3624(b) by calculating petitioner Yancey White's good conduct time on the basis of the actual time he had served rather than his imposed sentence. I granted White's petition for a writ of habeas corpus under 28 U.S.C. § 2241 and ordered the warden to recalculate White's good conduct time in accordance with § 3624(b). Respondent has appealed that decision and the Court of Appeals for the Seventh Circuit heard oral argument on the matter on September 9, 2004. A ruling on the appeal is expected before the end of this year.

Petitioner Donald Simms is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. His petition under § 2241 raises the same issue as that in White: he

alleges that the bureau is calculating his good conduct time on the basis of time served rather than the sentence imposed. Petitioner has paid the \$5 filing fee.

In the time that has passed since the Yancey White's petition was granted, several other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons' method of calculating their good time credits. I have stayed the proceedings in most of these actions pending a decision on the appeal filed in White's case. I have decided to issue orders to show cause if (1) the petitioner submits a sentence computation from the Bureau of Prisons showing the inmate's term of imprisonment, good conduct time that has been both earned and disallowed, current release date and pre-release preparation date; and (2) I can 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.

In this case, it appears from the documentation attached to petitioner's petition that his release date is not imminent and that a stay of the proceedings is warranted. The Bureau of Prisons sentence computation sheet attached to petitioner's petition shows that petitioner was sentenced on July 28, 2003 to a 65-month term of imprisonment. The Bureau of Prisons has calculated his good conduct time to be 255 days and projected his release date as October 6, 2005 and his pre-release date as May 25, 2005. If the Bureau recalculates petitioner's release date in accordance with White, petitioner will be entitled to release

approximately 38 days earlier, and his pre-release date may be adjusted similarly. Nevertheless, even if petitioner's pre-release date is adjusted by approximately 38 days, it would occur no earlier than April 2005. Therefore, neither petitioner's release nor his pre-release dates are so immediate that he will be prejudiced by a stay of the proceedings pending the court of appeals's decision in White.

ORDER

IT IS ORDERED that this petition for a writ of habeas corpus is STAYED pending a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White v. Scibana, 03-C-581.

Entered this 8th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge