

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

REGINALD S. BUCKNER,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-859-C

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 Reginald Buckner is an inmate at the Federal Correctional Institution at Oxford, Wisconsin. His petition 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. However, I note that petitioner does not verify, declare or certify under penalty of perjury that the factual assertions made in his petition are true and correct as 28 U.S.C. § 2242 requires. Therefore, petitioner must cure this defect in his pleading before I can make any final ruling in this action.

In the time that has passed since Yancey White's petition was granted, several other prisoners at the Oxford facility have filed habeas corpus petitions challenging the Bureau of Prisons's 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 neither his release nor pre-release date is imminent and that a stay of the proceedings is warranted. Although the Bureau of Prisons sentence monitoring good time data sheet attached to petitioner's petition does not show when petitioner was sentenced petitioner asserts in his petition that he was sentenced on March 1, 1989 to a 250-month term of imprisonment. Petitioner's documentation does show that the Bureau of Prisons has

projected his earned good time to be 980 days and his release date to be August 8, 2007. If the Bureau recalculates petitioner's release date in accordance with White, petitioner will be entitled to release approximately 146 days earlier, and his pre-release date may be similarly advanced. I am satisfied that neither petitioner's release date nor his pre-release date is so immediate that he will be prejudiced by a stay of the proceedings pending the court of appeals' decision in White.

ORDER

IT IS ORDERED that petitioner may have until November 30, 2004, in which to submit a copy of his habeas corpus petition on which he has written above his signature that he declares, verifies or certifies under penalty of perjury that the allegations of fact in the petition are true and correct.

Further, 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 18th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge