IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RONALD BIRMINGHAM,

                                                  ORDER

                    Petitioner,

                                          04-C-983-C

        v.

JOSEPH SCIBANA, Warden,

                    Respondent.

- -

       This is a petition for a writ of habeas corpus brought by petitioner, who is confined at the Federal Correctional Institution in Oxford, Wisconsin. In his petition, petitioner alleges that he will be forced to serve a longer duration of confinement because the Bureau of Prisons has computed his good time credits in a manner that is contrary to the dictates of 18 U.S.C. § 3624(b). I decided this precise question on its merits 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). Subsequently, respondent appealed this court's decision.

On December 2, 2004, the Court of Appeals reversed this court's ruling and held that the Bureau of Prisons' interpretation of the statutes governing calculation of good-time credit is entitled to deference. White v. Scibana, 390 F.3d 997 (7th Cir. 2004). Its mandate was issued on February 17, 2005. This means that petitioner cannot prevail on his claim that he is being subjected to illegal custody because of the manner in which the Bureau of Prisons is calculating his good conduct time. Therefore, petitioner's petition must be dismissed for his failure to show that he is in custody in violation of the Constitution or laws of the United States.

ORDER

IT IS ORDERED that this petition for a writ of habeas corpus is DISMISSED for petitioner's failure to show that he is in custody in violation of the Constitution or laws of the United States.

Entered this 18th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge