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

REGINALD J. WALKER,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

OPINION AND ORDER

11-cv-356-wmc

Petitioner Reginald J. Walker, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, contending that he is entitled to be placed in a halfway house 12 months prior to the end of his sentence under the Second Chance Act of 2007, 18 U.S.C. § 3624(c). In his verified petition, Walker avers that the Bureau of Prisons (BOP) is denying him the 12 month halfway house placement, which was recommended by his unit team. Petitioner has paid the $5 filing fee.

A habeas petition can be the proper route to relief even if a prisoner is not seeking complete freedom; the question is whether the prisoner is seeking "a quantum change in the level of custody." *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991); *see also Glaus v. Anderson*, 408 F.3d 382, 387-88 (7th Cir. 2005). In *Hendershot v. Scibana*, 04-C-291-C, 2004 WL 1354371 (W.D. Wis. June 10, 2004), this court concluded that the difference between a prison and a halfway house represents a "quantum change in the level of custody" under *Graham* because the two forms of custody are qualitatively different. *See also Eaton v. United States*, 178 F.3d 902, 903 (7th Cir. 1999) ("[a] claim to be entitled to release from a more to a less restrictive form of custody is within the scope of the habeas corpus statute"); *Ramsey v. Brennan*, 878 F.2d 995, 996 (7th Cir. 1989) (halfway house is "a twilight zone between prison and freedom"). I am unaware of any authority that has undermined the holding in *Hendershot*.

In *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004), the court found it unnecessary to resolve the custody issue, but it flagged a different jurisdictional question: whether the petitioner's claim appeared to involve the requirement in § 3624(c) that BOP provide a prisoner with prerelease

custody, such as in a community correctional facility. The *Richmond* court stated that "§2241 does not furnish the appropriate means to contest BOP's understanding of §3624(c)." *Id.* at 606. In *Richmond,* the prisoner was challenging BOP's interpretation of a previous version of § 3624(c) under which BOP refused to *consider* requests for transfer on the ground that it did not have discretion to transfer prisoners to a halfway house before the last 10% of their sentence. Because success on that question would not guarantee Richmond a transfer, the court concluded that he was not challenging his "custody." *Id*. at 606.

In this case, Walker claims that in considering his request, BOP failed to give him the transfer he is entitled in light of his circumstances. Section 3624(c)(1) provides:

> The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

The statute does not guarantee a prisoner a set amount of time at a halfway house. Rather, BOP is required, when "practicable," to allow a prisoner to spend "a portion" of the last months of his term under conditions that will prepare him for reentry. Neither the amount of time nor the place for that preparation is spelled out by § 3624(c)(1). Indeed, the language of the statute appears to grant substantial discretion to BOP on the appropriate placement of a particular prisoner based on a range of subjective factors.

Even so, this does not mean that BOP has absolute authority to deny a prisoner transfer to a halfway house. Following enactment of the Second Chance Act, BOP was required to issue regulations that "ensure that placement in a community correctional facility . . . is . . . of sufficient duration to provide the greatest likelihood of successful reintegration into the community". 18 U.S.C. § 3624(c)(6). In addition, the required regulations are intended to ensure that placement in

a halfway house is made "on an individual basis" and takes into account the factors listed in 18 U.S.C. § 3621(b). 18 U.S.C. § 3624(c)(6)(A)-(B).

At this stage of the proceedings, it is impossible to determine whether BOP has applied these criteria in good faith when denying petitioner's request for placement in a halfway house. Accordingly, respondent Holinka will be directed to show cause why the petition should not be granted.

ORDER

IT IS ORDERED that:

1. Not later than 20 days after service of the petition, respondent Holinka is to file a response showing cause, if any, why this writ should not issue with respect to petitioner Reginald J. Walker's claim that the Bureau of Prisons is violating his federal rights by refusing to transfer him to a halfway house 12 months before the end of his sentence.

2. Petitioner may have 20 days after service of the response in which to file a traverse to the allegations of the response submitted by respondent.

3. For the sake of expediency, the petition to Warden Holinka, the local United States attorney and the United States Attorney General will be sent via certified mail in accordance with Fed. R. Civ. P. 4(I), along with a copy of this order.

Entered this 2nd day of June, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge