IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

PATRICK M. CURRY,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

OPINION and ORDER

11-cv-386-bbc

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

In this petition for a writ of habeas corpus under 28 U.S.C. § 2241, federal prisoner Patrick M. Curry contends that the Federal Bureau of Prisons is violating his rights under the Second Chance Act, 18 U.S.C. § 3624(c), by refusing to transfer him to a halfway house until the last six months of his sentence. Because I conclude that the Bureau of Prisons considered the appropriate factors in determining the amount of time petitioner should spend in a halfway house, I am denying the petition.

Petitioner's case manager, Denise Martin, explains in her declaration how she considered all of the required factors under 18 U.S.C. § 3621(b): (1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement by the court that imposed the sentence; and

(5) any pertinent policy statement issued by the Sentencing Commission. Martin Decl. ¶¶ 10-15, dkt. # 4-1. That is all she was required to do.

As I have noted in previous cases, 18 U.S.C. § 3624(c) does not guarantee prisoners a particular amount of time in a halfway house. Willis v. Holinka, 10-cv-271-slc, 2010 WL 4225879 (W.D. Wis. Oct. 20, 2010); Pence v. Holinka, 09-cv-489-slc, 2009 WL 3241874, *1 (W.D. Wis. Sep. 29, 2009); Carmichael v. Holinka, 09-cv-388-slc, 2009 WL 2512029, * 1 (W.D. Wis. Aug. 17, 2009). Rather, the bureau is required when "practicable" to allow a prisoner to spend "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." 18 U.S.C. § 3624(c)(1). The only requirements in the statute are that the bureau must "ensure that placement in a community correctional facility . . . is . . . of sufficient duration to provide the greatest likelihood of successful reintegration into the community" and that decisions about placement in a halfway house must be made "on an individual basis" and take into account the factors listed in 18 U.S.C. § 3621(b). 18 U.S.C. § 3624(c)(6)(A)-(B). Martin discusses in her declaration each of the relevant factors for consideration and sets forth a reasonable basis for waiting to transfer petitioner to a halfway house until the last six months of his sentence. Because that is all petitioner is owed under § 3624(c), his petition must be denied.

Most of petitioner's brief is devoted to explaining his belief that good reasons exist

to give him more time in a halfway house and arguing that the bureau treats some prisoners more favorably than others without a legitimate reason. Petitioner's first argument is best directed to the bureau in the first instance. It is not this court's role to determine whether the bureau made the "best" decision; it is simply to determine whether the bureau considered each of the factors it was required to consider. Thus, petitioner cannot prevail by arguing that the bureau should have analyzed the factors differently or considered additional facts.

Petitioner's second argument is on the right track. I have stated in other cases that a prisoner might be entitled to relief under § 3624(c) if he could show that the bureau's denial of his request was arbitrary and capricious. Tristano v. Federal Bureau of Prisons, 2008 WL 3852699, *1 (W.D. Wis. 2008). Accord Singleton v. Smith, 2010 WL 744392, *2 (C.D. Ill. Feb. 26, 2010). However, this argument fails because petitioner has adduced no evidence to support any of the statements in his brief. Box v. A&P Tea Co., 772 F.2d 1372, 1379 n.5 (7th Cir. 1985) ("[A]rguments in briefs are not evidence."). Further, a decision is not arbitrary simply because all prisoners do not receive identical treatment. For example, petitioner says that some prisoners receive more time in a halfway house if they participate in certain programs before the transfer. Pet.'s Br., dkt. #13, at 11. Petitioner may believe that the bureau should limit itself to the five statutory factors, but it is not required to do so, so long as it considers those factors as well. I cannot conclude that it would be arbitrary and capricious to consider the programming a prisoner has received in

making a decision about halfway house placement.

In closing, I note that petitioner states in his traverse that the bureau did not explain the reasons for its decision to deny him additional time in a halfway house until after he filed this lawsuit. This statement is supported by the bureau's responses to petitioner's administrative grievances and appeals, all of which provide a conclusion but not the basis for it. That is unfortunate. The bureau would avoid much litigation under § 3624(c) if it demonstrated to the prisoner that it has complied with the law at the time it makes the decision or at least when the prisoner files a grievance on the subject. After all, a primary purpose of requiring exhaustion is to avoid the need for litigation. Porter v. Nussle, 534 U.S. 516, 524-25 (2002); Booth v. Churner, 532 U.S. 731, 737 (2001). It makes little sense to require prisoners to file a grievance if prison officials are not going to provide a meaningful response to it. Even if many prisoners are not deterred by the explanation, at the very least it would help rebut any accusation during litigation that the bureau is advancing a fabricated, post-hoc justification. Although there is no evidence that the bureau acted improperly in this case, I encourage the bureau to make it a practice to explain to prisoners how it reached its decision.

ORDER

IT IS ORDERED that petitioner Patrick Curry's petition for a writ of habeas corpus,

dkt. #13, is DENIED for his failure to show that he is in custody in violation of federal law.

Entered this 26th day of August, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge