

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

NORBERT PHILLIPS,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

OPINION and ORDER

11-cv-505-bbc

Under the Second Chance Act of 2007, 18 U.S.C. § 3624(c), the Federal Bureau of Prisons is authorized to place prisoners in a residential re-entry center, or halfway house, for up to 12 months before the end of the prisoner's term of imprisonment. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner Norbert Phillips contends that the Bureau is violating § 3624(c) by failing to place him in a halfway house for the full 12 months authorized by the Act. In an order dated August 23, 2011, I directed respondent to show cause why the petition should not be granted. After reviewing the government's response and petitioner's traverse, I conclude that the petition must be denied.

DISCUSSION

Under 18 U.S.C. § 3624(c)(1),

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 language of the statute makes it clear that prisoners are not guaranteed 12 months at a halfway house. Rather, the Bureau 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).

This does not mean that the Bureau has absolute authority to deny a prisoner transfer to a halfway house. Under § 3624(c)(6), 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.” In addition, 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)(b)(A)-(C). These factors include “(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 pursuant to section 994(a)(2) of title 28.” 18 U.S.C. § 3624(b).

In response to the order to show cause, respondent submitted a declaration from petitioner’s case manager Andrew Weber who made the decision to give petitioner 176 days

in a halfway house. Dkt. #5-2. The declaration shows individualized consideration of each of the five factors. Petitioner, however, contends that the case manager failed to consider several relevant facts in his review.

First, petitioner contends that the case manager did not give proper consideration to petitioner's attempts to take advantage of educational and other programming offered by the Bureau of Prisons. Although the case manager stated that petitioner "was not taking advantage of education and vocational opportunities offered at FCI Oxford," dkt. #5-2 ¶ 12, the case manager failed to consider that petitioner was interviewed for participation in the Residential Drug Abuse Program but could not participate because he did not have enough time left on his sentence. Similarly, petitioner contends that he could not participate in vocational programs at FCI-Oxford because the waiting lists were too long. Additionally, petitioner argues that the case manager failed to consider that petitioner had made considerable progress toward his GED and he had been recognized as a student of the month. Finally, petitioner contends that the case manager stated incorrectly that petitioner did not support his children financially and did not have employment prospects, even though petitioner does support his two children financially and could have begun working in July 2011.

It is not the court's role to review the § 3621(b) factors independently and make a de novo determination as to petitioner's placement in a halfway house. Once the Bureau adopts the case manager's decision, that decision is entitled to deference so long as it is not arbitrary, lacking any rational basis or otherwise contrary to the requirements of the statute.

Singleton v. Smith, 2010 WL 744392, *2 (C.D. Ill. Feb. 26, 2010) (“If the [BOP] considers the relevant factors in making its determination, a challenge . . . could not succeed unless the plaintiff could show that the decision was arbitrary, capricious, or otherwise an abuse of discretion, a difficult standard for the plaintiff to meet.”) (citing Tristano v. Federal Bureau of Prisons, 2008 WL 3852699, at *1 (W.D. Wis. May 15, 2008)); see also Pence v. Holinka, 2009 WL 3241874, *3 (W.D. Wis. Sept. 29, 2009) (denying petition for writ of habeas corpus because Bureau’s decision was not arbitrary and was entitled to deference).

In this case, the case manager considered that petitioner committed his offense while on probation for the same offense and weighed this fact against additional halfway house placement. He also considered petitioner’s clean disciplinary history, his employment while in prison, his completion of a wellness program and his enrollment in GED classes that were not yet completed. The case manager believed that petitioner should take advantage of more classes and obtain his GED before being released. Additionally, he considered that petitioner had some resources that other inmates do not, including a residence to release to, a local support system that would make it easier for him to reintegrate into the community and some experience in construction.

In sum, the case manager considered all of the factors set forth in 18 U.S.C. § 3624(b) in recommending that petitioner be granted 150 to 180 days in a halfway house. Although petitioner believes that the case manager should have considered additional factors or should have given more weight to petitioner’s claim of employment prospects and the waiting lists for vocational and drug-treatment programs, he has not shown that the Bureau’s decision

was arbitrary or an abuse of discretion.

ORDER

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

Entered this 31st day of October, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge