

IN THE
UNITED STATES DISTRICT COURT
IN DISTRICT OF SOUTH CAROLINA

FILED

SEP 20 2004

C (5w)

LARRY W. PROPES, CLERK
FLORENCE, SC

BRIAN LAMONT DOYLE,
petitioner,

v.

UNITED STATES OF AMERICA,
FEDERAL BUREAU OF PRISON,
JOHN J. LAMANNA, WARDEN

CASE NO: 604 - 22255 - 26 Ak

28 U.S.C.A. § 2241 AND
TITLE 5 U.S.C.A. §§ 552 et.
Seq.

HABEAS CORPUS AND ADMINISTRATIVE PROCEDURE

NOW COMES, Petitioner, BRIAN LAMONT DOYLE, PRO SE, who respectfully ask this court to enter the appropriate order pursuant to 28 U.S.C.A. § 2241 motion and Title 5 U.S.C.A. §§ 552 et. Seq.

The Pro Se appellant invokes for this matter, Haines v. Kerner, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S.Ct 594 (1972) which states:

Pro se litigants' pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleading to state a valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirement. Also as stated in United States v. Sanchez, 88 F. 3d 1243 (D.C. cir 1996) " courts will go to particular pains to protect pro se litigant against consequences of technical errors if in justice would otherwise result."

(1)

STATEMENT OF JURISDICTION

This court has jurisdiction over this motion pursuant to 28 U.S.C.A. § 2241 and Title 5 U.S.C.A. §§ 552 et. Seq. The petitioner is currently serving a prison term in Edgefield, South Carolina, and the petitioner's supervised release location is in Aiken, South Carolina. Additionally, the petitioner's ccc/home confinement placement will be in South Carolina. Therefore the petitioner seeks judicial review before this court.

STATEMENT OF THE ISSUES

- I. The Federal Bureau of Prison (hereinafter "BOP") has erred in refusing to give the petitioner (6) six months community correction center (ccc) or home confinement placement as ordered by congress under 18 U.S.C. § 3642 (c)
- II. The Federal BOP has delayed the petitioner's ability to timely use the administrative remedy process in order to delay justice.
- III. The Federal BOP has fail to follow the rulings of courts and congress in handling the community correction center (ccc) or home confinement placement, as under 18 U.S.C 3624 (c).
- IV. The Federal BOP decision to handle the administrative remedy process to a resolution has been futile and they have not granted any relief.

STATEMENT OF CASE

A. Course of Proceedings and Desposition below

On October 24, 2001, Brian Lamont Doyle was indicted in a sixty-three count indictment charging him and co-defendant Lamonte Steele with a Medicare Fraud Conspiracy and related substantive counts. The petitioner was charged in count 1, 32-49, 60-63. Trial commenced on February 18, 2003. During trial, the government dismissed 33-35, 38, 41, and 43-49. After three calender days of deliberations the jury acquitted Doyle of counts 36, 37, 40 and 42. Doyle was sentenced on May 1, 2003 to 30 months of imprisonment and restitution in the smount of \$503,762.89, Doyle is currently incarcerated in Edgefield, South Carolina and has been in Federal custody continuously since May 1, 2003/

STATEMENT OF FACTS

That back in early April the petitioner begin Administrative Remedy Process to resolve the issue of petitioner being given 6 (six) months in a community corrections center or home confinement placement. The petitioner was delayed by BOP staff at Edgefield after staff member; Counselor Huger advised the petitioner that his BP-8 was lost or misplaced. Under the administrative remedy rule a BP-8 should be answered within 5 days. In this case the petitioner was delayed more than a month. Additionally, only after the petitioner inquired about the Administrative Remedy (BP-8) was he the advised that it was lost or misplaced. The petitioner was then given a second BP-8 to complete, which staff took the whole 5 days to respond.

Shortly after this incident in or around the middle of may the petitioner had a meeting with a executive staff member regarding a different incident. In this meeting the petitioner mention that he was filing for (6) six months (ccc) placement and was told quote " that the BOP Washington was having an executive meeting about ccc placement, and that inmates would be delayed by the BOP by issuing an extensions of 20-30 days as allowed under the process.

This was being used to further delay inmate in getting the maximum time allowed under 18 U.S.C. § 3642 (c). That would take away an additional 90 days to inmates trying to get relief.

Additionally, several inmates have been delayed by using the same process here at Edgefield Federal Prison Camp, all getting the same response " your administrative remedy appeal is denied, due to recently change in policies. Both at the BP-9 (warden remedy), BP-10 (Regional office remedy) and BP-11 (office of General Counsel, Washington D.C.). Their delayed process is to routinely ask for an extension to further investigate your remedy request. In reality, this process is only use to delay inmates from sucessfully receiving (6) six months ccc or home confinement placement as ordered by Congress and several judges.

A court will review action of an administrative agency, notwithstanding subsection (a) (2) of this section providing that this chapter does not apply in cases... If there is a patent abuse of this discretion. see: Reece v. United States 455 F. 2d 240. Additionally, where congress has immunized agency decision making Judicial scrutiny, court may conduct only the most limited of reviews and may consider only whether agency has act outside it statutory limits or has violated the constitution Lyle v. Sively, 805 F. Supp 755 D. Ariz, 1992.

The action of a government agency may be subject to judicial review for arbitrariness and abuse of discretion, even though the agency's discretion is board. Doe v. U.S. Civil Service Commission, D.C. NY 1980, 483 F. Supp. 539

The Petitioner hereby ask the court to order the BOP to follow 18 U.S.C. § 3624 (c) as order by congress. The BOP states: " that on December 20, 2002, the changed its procedures for referring inmates to ccc's".

Clearly, this is in error the petitioner was indicted on October 24, 2001 therefore should receive (6) six months ccc or home confinement see: Manahan v. Winn, 276 F. Supp 2d 196 (D. Mass 2003) Ex Post Facto clause and due process. The petitioner was indicted before the BOP change its rules on December 20, 2002.

Additionally, the BOP's new rules were based on a totally incorrect reading of 18 U.S.C. § 3621 (b) and 18 U.S.C. § 3624 (c) see: Greenfield v. Menifee No: 03-CV-8205 (SDNY); Hurt v. FBOP, No: 5: 03-CV-265-4 (M.D. GA 8/29/03) [Edgefield inmate]; Fender v. FBOP: No: 3:03-2806-12BC (South Carolina District); Cloffoletti v. FBOP, NO: 03-CV-3220 (ILG) EDNY) and Zucker v. Menitee, NO: 03-CV-10077 (RJH) 1/21/04.

Moreover, the BOP has failed to take the step required by law to make changes in policies order by congress. It must first be published in the Federal Register for comments, as required by the Administrative Procedures Act (APA). Additionally, under 18 U.S.C. 3624 (c) which provide that inmates serving terms of imprisonment spends a reasonable part, not to exceed (6) six months of the last 10 per centum of the term to be served. see: Ferguson v. Ashcroft, 248 F. Supp 2d 547 (M.D. La 2003) APA rulemaking Procedures. In the petitioner case, he was indicted before the December 20, 2002 policies change. Additionally, (6) months ccc or home confinement would allow the petitioner to adjust back to the community and find a job so that the petitioner can begin paying restitution as ordered by the court to Health & Human Services. Moreover, the petitioner would suffer irreparable injury if the BOP's denial were left in place, that by ordering the BOP to withdraw its denial would not

not injure the BOP and that ordering withdrawal would not harm the public interested.

On Sept 7, 2004 the defendant received a response to his BP-10 (region remedy). The response was due back on August 29, 2004. It was signed by Regional staff on August 26, 2004. When the petitioner received his response on Sept 7, 2004 at 3:39 p.m. The petitioner only received a copy of the part B response and two yellow copies of the BP-10. However, it was missing the petitioner's BP-8, BP-9 and the warden responses that are required to file a BP-11 to the office of General Counsel, Washington D.C.. This was done to bring further delay to petitioner. In other incident(s) the regional office has always forwarded all administrative remedy forms back after reaching its decision.

The BOP has refused to consider petitioner for 6 months ccc placement and cites a December 2002 memorandarm to support its decision to not apply its pre- December 2002 rule (that was adopted through formal APA rulemaking and would allow the 6 months ccc placement). The BOP cannot change its policy and the application of its rule without a formal rule making to change it. It has not done so and therefore petitioner seeks the court's intervention to get the 6 months ccc placement.

Seeking the court's judicial review of the agency's denial normally requires exhaustion of administrative remedies and a final agency decision. In this context, that means having the BOP denial on a form BP-11. The BOP has not yet provided its response on that form but has issued denials of petitioner's request on its forms BP-8, BP-9 and BP-10. This case is ripe for judicial review

Now because it is futile to merely wait for the return of the BP-11 which is certain to also deny the request on the same grounds as the earlier BOP responses. Additionally, to provide enough time to give the 6 months ccc placement the BOP must act to transfer petitioner to ccc or home confinement by January 26, 2005.

Moreover, the BOP has consistently denied a number of other inmates the 6 months even after the response on a BP-11. Petitioner's request will be no different. The only instances where BOP has provided any known inmate the 6 months or any portion thereof is where inmates have sought and obtained the judicial review and action that the petitioner seeks here. To delay judicial review, now runs the risk of mooted the issues as the opportunity to have 6 months remaining of BOP custody is expiring.

Therefore the defendant ask that this court act and order that the defendant be granted (6) six months ccc or home confinement placement under 18 U.S.C. § 3642 (c), and that the petitioner process be no longer delayed by the action of the Federal BOP in the interest of justice see: Culter v. United States, 241 F. Supp 2d 19, 72 (D DC. 2003) [equitable estoppel] also see: Litton Microwave cooking Product v. N.L.R.B, 949 F. 2d 249 CA.8 1991

The BOP is only allowing the petitioner (3) months of ccc/ home confinement placement. The petitioner projected release date is July 15, 2005, via good conduct time release. As calculated by the sentence monitoring computation data form, the petitioner pre-release preparation is dated April 26, 2005. In accordance with 18 U.S.C. § 3624 (c) the petitioner should be transferred to ccc or home confinement on January 26, 2005.

THEREFORE, the petitioner comes now asking this court to enter an order that the petitioner be granted his complete (6) six months as stated under 18 U.S.C. 3624(c) and that the petitioner be transferred to ccc or home confinement on January 26, 2005.

Submitted 13th day of September, 2004

Respectfully Submitted,



BRIAN LAMONT DOYLE
PRO SE
INMATE NO: 53025-019
P.O. BOX 725
Edgefield Federal Prison Camp
Edgefield, South Carolina 29824

Enclosed:

Regional appeal part - B response
Petitioner J&C

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing document upon all parties by depositing a copy of the same in the United States Mail with First Class postage thereon addressed to:

✓ J. Strom Thurmond Jr.
U.S. Attorney of South Carolina
1845 Assembly Street
Columbia, SC 29201-2431

&

✓ The Bureau of Prisons Central Office
Office of General Counsel
320 First Street NW
Washington, DC 20534

This the 13th day of September, 2004.

Respectfully Submitted:



Brian L. Doyle,
Pro Se

Brian L. Doyle
Inmate No; 53025-019
Federal Prison Camp
P.O. Box 725
Edgefield SC 29824

RECEIPT - ADMINISTRATIVE REMEDY

DATE: AUGUST 3, 2004

FROM: ADMINISTRATIVE REMEDY COORDINATOR
SOUTHEAST REGIONAL OFFICE

TO : BRIAN LAMONT DOYLE, 53025-019
EDGEFIELD FCI UNT: CAMP QTR: Z06-234UDS

THIS ACKNOWLEDGES THE RECEIPT OF THE REGIONAL APPEAL
IDENTIFIED BELOW:

REMEDY ID : 340895-R1
DATE RECEIVED : JULY 30, 2004
RESPONSE DUE : AUGUST 29, 2004
SUBJECT 1 : COMMUNITY CORRECTIONS CENTER REFERRALS
SUBJECT 2 :
INCIDENT RPT NO:

*Applied
2004*

Regional Administrative Remedy Appeal No. 340895-R1
Part B - Response

This is in response to your Regional Administrative Remedy Appeal receipted July 30, 2004. You allege you are being denied a six month Community Corrections Center (CCC) placement. As relief, you request a six month CCC placement or Home Confinement.

On December 20, 2002, the Bureau of Prisons changed its procedures for referring inmates to CCCs. Specifically, pre-release CCC designations are now limited in duration to the last 10% of an inmate's prison term to be served, not to exceed six months. This limitation complies with 18 U.S.C. § 3624(c).

Program Statement 7310.04, Community Corrections Center Utilization and Transfer Procedures, provides guidelines to staff regarding the effective use of CCCs. Each case is reviewed on an individual basis and the amount of placement time is determined by an inmate's transition needs, offense severity, criminal conduct, and institutional adjustment. Additionally, inmates with unresolved pending charges, or detainers, which will likely lead to arrest, conviction, or confinement, will not be referred for CCC placement.

You have a projected release date of July 15, 2005, via Good Conduct Time Release. As calculated on your Sentence Monitoring Computation Data form, your Pre-Release Preparation date is April 26, 2005. In accordance with 18 U.S.C. § 3624(c), you may not be transferred to a CCC prior to that date. Thus, you are ineligible for six months of CCC placement.

Accordingly, your Regional Administrative Remedy Appeal is denied. If dissatisfied with this response, you may appeal to the Office of General Counsel, Bureau of Prisons, 320 First Street, NW, Washington, DC, 20534. Your appeal must be received in the Office of General Counsel within 30 calendar days from the date of this response.

Date Shelley

[Signature]
Regional Director, SERO

Rec: From Ms Enslley
on 9/07/04 @
15:39
Add. manually, only received
Part B response
two two yellow copies of BP-10
All others part BP-8, 9 were
missing.

Page 1 of 5
FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAY 02 2003

LUTHER D. THOMAS, Clerk
By [Signature] Deputy Clerk

UNITED STATES OF AMERICA

-vs-

Case No. 1:01-CR-736-02

BRIAN LAMONT DOYLE,
a/k/a B. Lamont Doyle,
B. Lamont McCoy,
Mark Abbe and
Brian Jones.

Defendant's Attorney:
Leeza Cherniak

ATTEST: A TRUE COPY
CERTIFIED TRUE

MAY 05 2003

LUTHER D. THOMAS, Clerk
By [Signature] Deputy Clerk

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant was found guilty by jury on Count(s) 1, 36, 37, 40 and 42 of the indictment.

Accordingly, the defendant is adjudged guilty of such count(s) which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count No.</u>
18 U.S.C. §§287, 1035(a)(2), 1029 and 371	Conspiracy to File False Claims to Medicare	1
18 U.S.C. §1035(a)(2)	False Statements or Representations to Medicare	36, 37, 40, 42

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 32, 60, 61, 62 and 63.

Count(s) 33-35, 38, 39, 41, 43-49 are dismissed on the motion of the United States.

It is ordered that the defendant shall pay the special assessment of \$500.00 which shall be due immediately.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No. [Redacted]
Defendant's Date of Birth: [Redacted]
Defendant's Mailing Address:
[Redacted]

Date of Imposition of Sentence: May 1, 2003

Signed this the 2nd day of May, 2003.

[Signature]
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE

1:01-CR-736-02 : BRIAN LAMONT DOYLE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **30 months on each of Counts 1, 36, 37, 40 and 42, to be served concurrently.**

The Defendant shall voluntarily surrender to the United States Marshal for this district at 2:00 p.m. on May 1, 2003 on .

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

1:01-CR-736-02 : BRIAN LAMONT DOYLE

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years** on each of **Counts 1, 36, 37, 40 and 42**, with terms to run concurrently.

While on supervised release, the defendant shall not commit another federal, state or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard and special conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall not own, possess or have under his control any firearm, dangerous weapon or other destructive device.

The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall pay any restitution that remains unpaid at the commencement of the term of supervised release at the minimum monthly rate of \$250.00.

The defendant shall make a full and complete disclosure of finances and submit to an audit of financial documents at the request of the United States Probation Officer.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the United States Probation Officer unless the defendant is in compliance with the installment payment schedule.

The defendant shall submit to a search of his person, property, real or personal, residence, place of business or employment, and/or vehicle(s) at the request of the United States Probation Officer. The defendant shall permit confiscation and/or disposal of any material considered contraband or any other item which may be deemed to have evidentiary value related to violations of supervision.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on supervised release and at least two periodic drug tests thereafter as directed by the probation officer.

1:01-CR-736-02 : BRIAN LAMONT DOYLE

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

RESTITUTION

The defendant shall make restitution, jointly and severally with co-defendant Lamonte Steele, to the following person(s) in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Department of Health and Human Services Centers for Medicare and Medicaid Services Division of Accounting P.O. Box 7520 Baltimore, MD 21207-0520	\$503,762.89

The defendant shall make restitution payments from any wages he may earn in prison in accordance with the Bureau of Prisons Financial Responsibility Program. Any portion of the restitution that is not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervision and be paid at the minimum monthly rate of \$250.00.