

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

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NORMAN E. POUNDERS,

Plaintiff,

v.

STEVEN R. ROWE,

Defendant.

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ORDER

01-C-615-C

This is a proposed civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff Norman E. Ponders, who is presently confined at the Columbia County Jail in Portage, Wisconsin, alleges that defendant Steven R. Rowe violated his right of access to the courts by failing to provide him with an adequate law library, refusing to allow Huber inmates to go to the public library and not responding to plaintiff's request for a state public defender. In addition, plaintiff alleges that defendant violated his right to be free from cruel and unusual punishment by providing him with inadequate laundry facilities, locker storage and storage bins. Further, plaintiff alleges that the Huber account officer's policy is improper.

Plaintiff has paid the full fee for filing his complaint. However, because he is a

prisoner and defendant is a "governmental entity or officer or employee of a governmental entity," this court is required to screen the complaint, identify the claims and dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a), (b). Having screened plaintiff's complaint, I conclude that his claims that he has been denied access to the courts and subjected to cruel and unusual punishment must be dismissed because the claims are legally frivolous. Because I will dismiss these federal claims, I decline to exercise supplemental jurisdiction over plaintiff's state law claim.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if on three or more previous occasions the prisoner has had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. Although this court will not dismiss plaintiff's case sua sponte for lack of administrative exhaustion, if defendant can prove that plaintiff has not exhausted the remedies available to him as required by § 1997e(a), he may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d

727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, plaintiff makes the following allegations of fact.

## ALLEGATIONS OF FACT

### A. Parties

Plaintiff Norman E. Pounders is an inmate at Columbia County Jail in Portage, Wisconsin. Defendant is sheriff of the jail.

### B. Access to the Courts

#### 1. Legal materials

At the jail library, the statute books consist of mixed volumes that are out of date and missing pages. On numerous occasions, plaintiff has asked for Wisconsin statute and law books. In response, plaintiff has received two cases and probation and parole statutes; the rest of his requests have been ignored. The jail rule book states that inmates get to use the library once a week, but inmates, plaintiff included, are lucky if they get to go once a month.

#### 2. Public defender

Plaintiff has asked for a state public defender but has never gotten one.

## C. Cruel and Unusual Punishment

### 1. Laundry facilities

The laundry facilities at the jail consist of two household washers, one industrial washer and two industrial dryers to serve the entire jail. Inmates cannot use the industrial dryers. There are 75 or more Huber inmates. Huber inmates cannot do laundry as they wish but must submit a request slip. On many occasions, plaintiff has submitted request slips to use the laundry facilities but has had to wait two weeks.

### 2. Locker storage

All Huber inmates store their belongings in a locker the size of a high school gym locker. Inmates are to store clean, dirty and wet clothes in the same locker. At times, plaintiff's locker and all other lockers "smell something awful."

### 3. Storage bins

Inmates work under the honor system at jail. Huber inmates have only a plastic storage bin with a lid in which to store socks, underwear, canteen items and essentials. There is no lock on the bins. In order to catch a thief, plaintiff would have to pay undivided attention to his storage bin.

#### D. State Law Claim

Under Huber law, the Huber accounting officer is supposed to collect money only for fines, restitution and Huber fees. The Huber officer has implemented a policy or rule that states that inmates must have a spouse or show bills to receive money to pay financial obligations. This would place plaintiff between a “rock and a hard place.” On numerous occasions, plaintiff has submitted a request to pay for alcohol and other drug treatment. The Huber officer took control and released a check for more than plaintiff can release. At times, plaintiff does not have the money. Then, plaintiff cannot pay other financial obligations. For example, plaintiff cannot send money to his girlfriend, who owns a house in which he lives, to help pay bills.

### DISCUSSION

#### A. Access to the Courts

It is well established that prisoners have a constitutional right of access to the courts for pursuing post-conviction remedies and for challenging the conditions of their confinement. Campbell v. Miller, 787 F.2d 217, 225 (7th Cir. 1986) (citing Bounds v. Smith, 430 U.S. 817 ( 1977)); Wolff v. McDonnell, 418 U.S. at 539, 578-80 (1974); Procunier v. Martinez , 416 U.S. 396, 419 (1974). The right of access is grounded in the due process and equal protection clauses of the Fourteenth Amendment. Murray v.

Giarratano, 492 U.S. 1, 6 (1989). To insure meaningful access, states have the affirmative obligation to provide inmates with "adequate law libraries or adequate assistance from persons trained in the law." Bounds, 430 U.S. at 828.

To have standing to bring a claim of denial of access to the courts, a plaintiff must allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). The plaintiff must have suffered injury "over and above the denial." Walters v. Edgar, 163 F. 3d 430, 433-34 (7th Cir. 1998) (citing Lewis , 518 U.S. 343). At a minimum, the plaintiff must allege facts showing that the "blockage prevented him from litigating a nonfrivolous case." Id. at 434; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint).

Plaintiff asserts that defendant is violating his Fourteenth Amendment right of access to the courts by providing him with insufficient legal materials and limiting his time at the law library. Plaintiff also asserts that he has asked for a public defender but has never gotten one. However, plaintiff does not allege injury over and above the inconvenience caused by these alleged insufficiencies. Specifically, plaintiff does not allege that because of insufficient legal materials or time in the library, a nonfrivolous legal action of his was dismissed or the time for filing such an action ran out. Plaintiff's allegations as to the public defender are so conclusory that it is not possible to make out how plaintiff's not getting a public defender

has caused a nonfrivolous legal action of his to be dismissed. Thus, plaintiff's claim that defendant is violating his right of access to the courts will be dismissed because it is legally frivolous.

#### B. Cruel and Unusual Punishment

The Eighth Amendment imposes a duty on prison officials to provide adequate shelter and prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Although prisoners are entitled to "the minimal civilized measure of life's necessities," Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997) (citing Farmer v. Brennan, 511 U.S. 825, 833-34 (1994)), conditions that create "temporary inconveniences and discomforts" or that make "confinement in such quarters unpleasant" are insufficient to state an Eighth Amendment claim. Adams v. Pate, 445 F.2d 105, 108, 109 (7th Cir. 1971).

Plaintiff alleges that defendant subjected him to cruel and unusual punishment by providing him with insufficient laundry facilities, locker storage and storage bins. The facts that petitioner cannot easily wash or store his clothing and that the storage bins do not lock do not rise to the level of cruel and unusual punishment. Although these conditions may make his confinement unpleasant, plaintiff is not deprived of the "minimal civilized measure

of life's necessities." Dixon, 114 F.3d at 642. Plaintiff's Eighth Amendment claim of cruel and unusual punishment will be dismissed as legally frivolous.

### C. State Law Claims

Plaintiff alleges that the Huber accounting officer follows a policy under which his account is handled improperly. From these facts, I understand plaintiff to allege that defendant breached a duty of care by managing plaintiff's Huber funds improperly. Although plaintiff may have a viable negligence claim against the Huber account officer or defendant, those claims are based on state common law. The Court of Appeals for the Seventh Circuit has recognized that "a district court ha[s] the discretion to retain or to refuse jurisdiction over state law claims." Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999). Because plaintiff has not raised a viable federal law claim, I decline to exercise supplemental jurisdiction over plaintiff's state law claim pursuant to 28 U.S.C. § 1367(a). See 28 U.S.C. § 1367(c)(3).

### ORDER

IT IS ORDERED that

1. Plaintiff Norman E. Pounders's Fourteenth Amendment claim that he has been denied access to the courts and his Eighth Amendment claim that he is subjected to cruel



and unusual punishment are DISMISSED as legally frivolous;

2. I decline to exercise jurisdiction over plaintiff's state law claim;

3. 28 U.S.C. § 1915(g) directs the court to enter a strike when an "action" is dismissed "on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . ." Because the state law claim does not fall under one of the enumerated grounds, a strike will not be recorded against plaintiff under § 1915(g); and

4. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 28th day of November, 2001.

BY THE COURT:

BARBARA B. CRABB  
District Judge