

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

DEAN L. PAULSON,

Petitioner,

ORDER

v.

02-C-0513-C

WISCONSIN DEPARTMENT OF
CORRECTIONS, WISCONSIN
CORRECTIONAL CENTER SYSTEM
EMPLOYEES & AGENTS and JACKSON
CORRECTIONAL INSTITUTION
EMPLOYEES & AGENTS,

Respondents.

This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Dean L. Paulson, an inmate at the Jackson Correctional Institution in Black River Falls, Wisconsin, alleges that prison officials are taking money wrongly from his prison account. As a result, petitioner contends, (1) his due process rights have been violated and (2) he has been subjected to cruel and unusual punishment because without these funds he has been unable to purchase needed personal hygiene products. Petitioner has submitted the initial partial payment required under 28 U.S.C. § 1915(b)(1).

As a preliminary matter, I note that petitioner's affidavit of indigency accompanying his complaint lists different respondents from those petitioner listed in the caption of his complaint. Inadvertently, the caption of the affidavit was used in the caption of the court's first order in this case. See Order dated September 12, 2002, dkt. #1, at 1 (naming respondents "Rock County Sheriff Eric A. Runaas & Employees & Agents, Rock County Corporation Counsel & Employees & Agents and Health Professionals Ltd"). However, the caption of this order has been changed to reflect the respondents petitioner listed in the caption of his complaint rather than in his affidavit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the prisoner's complaint must be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a respondent who is immune from such relief. See 42 U.S.C. § 1915e.

Petitioner's request for leave to proceed in forma pauperis will be denied as legally frivolous.

In his complaint and attachments, petitioner makes the following material allegations of fact.

ALLEGATIONS OF FACT

Petitioner Dean L. Paulson is an inmate at Jackson Correctional Institution in Black River Falls, Wisconsin. Respondents are unnamed employees or agents of the Wisconsin Correctional Center System and Jackson Correctional Institution.

In September 1997, petitioner was released from prison on parole. At that time, the Wisconsin Correctional Center System sent petitioner a check from his inmate trust release account that was \$233.55 less than the amount petitioner should have received. Petitioner asked his parole agent to look into the matter and the agent agreed. Subsequently, his parole agent was transferred without settling the matter. Petitioner is back in prison. In what appears to be another accounting error, petitioner has been advised that he *owes* the prison system \$148.05. This money is being withheld from his inmate account without his permission, rendering him unable to purchase supplies for his basic hygiene needs. Petitioner is given only some very cheap hand soap and a small tube of toothpaste.

DISCUSSION

A. Due Process

I understand petitioner to allege that prison officials are taking money either intentionally or negligently from his prison account to repay a debt he believes he does not owe. However, as long as state remedies are available, neither intentional nor negligent

deprivation of property gives rise to a constitutional violation. See Daniels v. Williams, 474 U.S. 327 (1986) (due process claim does not arise from state official's negligent act that causes unintended loss of or injury to property); Hudson v. Palmer, 468 U.S. 517 (1984) (inmate has no due process claim for intentional deprivation of property if state has made available suitable post-deprivation remedy). The state of Wisconsin provides several post-deprivation procedures for challenging the taking of property. According to Article I, § 9 of the Wisconsin Constitution,

Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without delay, conformably to the laws.

Sections 810 and 893 of the Wisconsin Statutes provide petitioner with replevin and tort remedies. Section 810.01 provides a remedy for the retrieval of wrongfully taken or detained property. Section 893 contains provisions concerning tort actions to recover damages for wrongfully taken or detained personal property and for the recovery of the property.

The state has not refused to provide petitioner with a post-deprivation remedy. The existence of these remedies defeats any claim he might have that respondents deprived him of his property without due process. Accordingly, petitioner's request for leave to proceed in forma pauperis on his due process claim will be denied.

B. Cruel and Unusual Punishment

Petitioner alleges that because prison officials are withholding money from his inmate account, he has been subjected to cruel and unusual punishment because he has been unable to purchase additional personal hygiene products. Petitioner concedes that he has been provided with hand soap and toothpaste, but complains that the soap is “very cheap” and the tube of toothpaste is “small.” These allegations do not rise to the level of an Eighth Amendment violation of cruel and unusual punishment. See Adams v. Pate, 445 F.2d 105, 108-09 (7th Cir. 1971) (conditions that create “temporary inconveniences and discomforts” or that make “confinement in such quarters unpleasant” are insufficient to state an Eighth Amendment claim). Accordingly, petitioner will be denied leave to proceed in forma pauperis on his Eighth Amendment claim.

ORDER

IT IS ORDERED that

1. Petitioner Dean L. Paulson’s request for leave to proceed in forma pauperis is DENIED because his claims are legally frivolous;
2. The unpaid balance of petitioner’s filing fee is \$145.73; petitioner is obligated to pay this amount in monthly payments according to 28 U.S.C. § 1915(b)(2);

3. A strike will be recorded against petitioner pursuant to § 1915(g); and
4. The clerk of court is directed to close this file.

Entered this 15th day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge