IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM STAPLES,

Plaintiff,

OPINION AND ORDER
00-C-506-C

v.

STEVEN B. CASPERSON, MICHAEL BECK, JON E. LITSCHER, SGT. L. DAVIS, PHILLIP KINGSTON, CAPT. TEGEL AND BARB CHANDLER,

Defendants.

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This is a proposed civil action for monetary, declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff William Staples is presently confined at Jackson Correctional Institution in Black River Falls, Wisconsin. Plaintiff has paid the full fee for filing his complaint. However, because he is a prisoner and defendants are "employee[s] 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. See 28

U.S.C. §§ 1915A(a), (b). Subject matter jurisdiction is present. See 28 U.S.C. § 1331.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). In his proposed complaint, plaintiff alleges the following facts.

## ALLEGATIONS OF FACT

### A. Parties

Plaintiff William Staples is an inmate at Jackson Correctional Institution in Black River Falls, Wisconsin. Defendants Steven B. Casperson and Michael Beck are employees at Dodge Correctional Institution. The following defendants are employees at Jackson Correctional Institution: defendant Phillip Kingston; defendant Sgt. L. Davis; defendant Capt. Tegel; and defendant Barb Chandler. Defendant Jon E. Litscher is the secretary of the Wisconsin Department of Corrections.

### B. Conditions of Confinement

On April 7, 2000, plaintiff was incarcerated at Dodge Correctional Institution. Defendant Casperson placed plaintiff in intake status for six days, during which he was confined for 24 hours a day and was denied his one hour of exercise. Along with two other

prisoners, plaintiff was housed in a cell that was 12 feet by 8 feet. The cell was built for one person. Plaintiff complained to defendants Casperson and Litscher about the size of his cell.

Defendants Kingston, Tegel, Litscher and Chandler refused to allow the inmates in program segregation steps II and III to leave their cells for an hour of exercise.

C. Inadequate Medical Care

On June 27, 2000, plaintiff was placed in temporary lock up. He asked for his walking cane, for which he had a medical slip. During his stay in lock up and in program segregation step II, plaintiff was denied his cane.

D. Access to the Courts

Plaintiff put three legal letters and a money disbursement slip in the mail to be sent to his lawyer David Bordow, defendant Litscher and the United States District Court for the Western District of Wisconsin. Defendants Casperson and Beck refused to send the letters.

Defendants Tegel, Kingston, Litscher and Chandler have refused to allow the inmates housed in program segregation to pass legal material to inmates who are willing to provide legal assistance.

E. Conspiracy

Plaintiff has filed many complaints against defendants Casperson, Beck, Kingston, Litscher and Chandler. They have conspired to undermine the complaint system.

F. Due Process

When plaintiff was given conduct report #1188599, he filled out a form requesting that the reporting officer appear as a witness. Plaintiff's request was approved but defendant Tegel refused to allow the reporting officer to appear. Defendant Tegel found plaintiff guilty and gave him 30 days' program segregation.

Defendants Kingston, Tegel, Litscher and Chandler have created a more restrictive status for inmates who have received more than two or three minor conduct reports within a certain amount of time.

G. Department of Corrections' Policy

Defendant Davis refused plaintiff's request to see a rule or policy pertaining to identification cards.

OPINION

A. Eighth Amendment: Size of Cell

In order to state a claim under the Eighth Amendment, plaintiff's allegations about prison conditions must satisfy a test that involves both a subjective and objective component. See Farmer v. Brennan, 511 U.S. 825, 834 (1994). The objective component focuses on whether the conditions "exceeded contemporary bounds of decency of a mature, civilized society." Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994) (citing Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992)). The subjective component focuses on intent: "whether the prison officials acted wantonly and with a sufficiently culpable state of mind." Lunsford, 17 F.3d at 1579. In prison conditions cases, the requisite "state of mind is one of 'deliberate indifference' to inmate health or safety." Farmer, 511 U.S. at 834. Deliberate indifference "'implies at a minimum actual knowledge of impending harm easily preventable, so that a conscious, culpable refusal to prevent the harm can be inferred from the defendant's failure to prevent it.'" Dixon v. Godinez, 114 F.3d 640, 645 (7th Cir. 1997) (quoting Duckworth v. Franzen, 780 F.2d 645, 653 (7th Cir. 1985)).

The Eighth Amendment imposes a duty on prison officials to provide adequate shelter, although conditions may be harsh and uncomfortable. See Dixon, 114 F.3d at 642. In order to violate the Eighth Amendment, deprivations must be "unquestioned and serious" and contrary to "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S.

337, 347 (1981). Plaintiff's allegations that his cell was too small do not suggest that plaintiff was confined to a cell that violated "contemporary standards of decency." See Caldwell v. Miller, 790 F.2d 589, 600 (7th Cir. 1986). Plaintiff does not allege that the conditions of his cell posed a threat to his health or safety or that the cell was uncomfortable in any other way.

B. Eighth Amendment: Lack of Exercise

I understand plaintiff to allege that defendant Casperson's refusal to allow him out of his cell to exercise for six days and that the refusal of defendants Kingston, Tegel, Litscher and Chandler to allow inmates in segregation out of their cells to exercise violates his right to be free from cruel and unusual punishment protected by the Eighth Amendment. Denial of exercise may constitute an Eighth Amendment violation in extreme circumstances where lack of movement causes muscle atrophy, threatening the health of the prisoner. See Thomas v. Ramos, 130 F.3d 754, 763 (7th Cir. 1997).

However, in Thomas, 130 F.3d at 764, the Court of Appeals for the Seventh Circuit held that a prisoner's Eighth Amendment rights were not violated when he could not exercise out of his cell for seventy days because he could do exercises in his cell. Similarly, in Harris v. Fleming, 839 F.2d 1232, 1236 (7th Cir. 1988), the court of

appeals held that a prisoner's rights were not violated when he spent twenty-eight days in confinement during which the only exercise was activity that he could do in a cell, such as push-ups or running in place: "Unless extreme and prolonged, lack of exercise is not equivalent to a medically threatening situation." See also Caldwell v. Miller, 790 F.2d 589, 600 (7th Cir. 1986) (no Eighth Amendment violation even though inmates confined to cells twenty-four hours a day for a one-month period after a lockdown). Plaintiff alleges only that he could not get exercise out of his cell for six days while he was at Dodge Correctional Institution and that inmates in program segregation at Jackson Correctional Institution could not exercise of their cells, although he fails to allege that he was ever in program segregation at Jackson and denied exercise out of his cell. Significantly, plaintiff has not alleged that lack of movement has caused muscle atrophy that threatens his health or that he was unable to exercise within his cell, such as by doing push-ups or running in place. See Thomas, 130 F.3d at 764. Plaintiff fails to state a claim upon which relief may be granted.

C. Eighth Amendment: Inadequate Medical Care

The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996)

(quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim warranting constitutional protection, plaintiff must allege facts from which it can be inferred that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). See Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). The Court of Appeals for the Seventh Circuit has held that serious medical needs encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. See Gutierrez, 111 F.3d at 1371. The Supreme Court has held that deliberate indifference requires that "the official must be both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837.

To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. Plaintiff fails to specify why he needed a cane, whether he suffered as a result of not

having a cane or that any of the respondents were aware of his need for the cane because of a serious medical need. Without such specific allegations, plaintiff has failed to state a viable claim of inadequate medical treatment under the Eighth Amendment.

D. Access to the Courts

I understand plaintiff to be alleging that defendants have impeded his constitutional right of access to the courts. It is well established that inmates have a fundamental constitutional right of access to the courts. See Bounds v. Smith, 430 U.S. 817, 821 (1977). To state a claim, the prisoner must allege facts from which an inference can be drawn of "actual injury." See Lewis v. Casey, 518 U.S. 343, 349 (1996). This rule is derived from the doctrine of standing, see id., and requires the prisoner to demonstrate that a non-frivolous legal claim has been frustrated or impeded. See id. at 353-54 nn. 3-4 and related text. In light of Lewis, a plaintiff must plead at least general factual allegations of injury resulting from defendants' conduct or suffer dismissal of his complaint for failure to state a claim upon which relief may be granted.

Plaintiff's claim that defendants Casperson and Beck refused to mail his legal letters and that defendants Tegel, Kingston, Litscher and Chandler refused to allow inmates to pass legal materials to other inmates fails to state a claim under Lewis, 518 U.S. at 322, because plaintiff

fails to allege any actual injury. Prisoners are entitled to "'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts.'" Id. at 351 (quoting Bounds, 430 U.S. at 825). However, none of plaintiff's allegations support an inference that he was prejudiced because of defendants' actions; he fails to identify a case in which his ability to defend or prosecute a claim was affected by prison staff's alleged obstruction of his access to the courts. Plaintiff fails to state a claim upon which relief may be granted.

E. Conspiracy

Plaintiff alleges that defendants Casperson, Beck, Kingston, Litscher and Chandler have conspired to undermine the inmate complaint system. To establish a claim of civil conspiracy, plaintiff must show "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage.'" Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979) (citing Rotermund v. United States Steel Corp., 474 F.2d 1139 (8th Cir. 1973)). Claims of conspiracies to effect deprivations of civil or constitutional rights may be brought in federal court under § 1983. Plaintiff has failed

to state a claim of civil conspiracy because he has not alleged an overt act that has resulted in damage. Specifically, plaintiff has not alleged that he was harmed by the faulty inmate complaint system because of defendants' actions.

Furthermore, a bare allegation of conspiracy is insufficient to support a conspiracy claim. See Ryan v. Mary Immaculate Queen Center, 188 F.3d 857, 860 (7th Cir. 1999). Rather, a plaintiff must allege facts from which a trier of fact could reasonably conclude that a meeting of the minds occurred among all members of the conspiracy and that each member of the conspiracy understood its objective to inflict harm on the alleged victim. See Hernandez v. Joliet Police Dept., 197 F.3d 256, 263 (7th Cir. 1999). Nothing in plaintiff's complaint supports such an inference. Plaintiff has provided no explanation how defendants Casperson, Beck, Kingston, Litscher and Chandler would conspire with each other given that they do not all even work at the same institution. In addition, plaintiff has failed to allege when the conspiracy was formed. See Ryan, 188 F.3d at 860 ("A conspiracy is an agreement and there is no indication of when an agreement between [respondents] was formed.") Thus, plaintiff fails to state a claim upon which relief may be granted that that defendants Casperson, Beck, Kingston, Litscher and Chandler engaged in a conspiracy against him.

F. Due Process

I understand plaintiff to allege that defendant Tegel violated his Fourteenth Amendment rights by finding him guilty of a conduct report and requiring him to spend 30 days in program segregation without allowing him to question the reporting officer and that defendants Kingston, Tegel, Litscher and Chandler violated his Fourteenth Amendment rights by creating a more restrictive status for inmates who have received a certain number of conduct reports within a certain period of time.

The Fourteenth Amendment prevents the state from depriving someone of life, liberty or property without due process of law -- usually in the form of notice and some kind of hearing by an impartial decision maker. A procedural due process claim against government officials requires proof of inadequate procedures *and* interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, in the prison context, protectible liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not

allow suit complaining about deprivation of liberty). Plaintiff's allegations that he had to spend 30 days in program segregation or may have had to spend time in a more restrictive status do not amount to "atypical, significant deprivations."

G. Department of Corrections' Policy

I am aware of no provision in the Constitution that gives a prisoner a right to require a prison official to grant access to an administrative policy. Plaintiff's claim against defendant Davis will be dismissed for failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

(1) Plaintiff William Staples's complaint is DISMISSED pursuant to 28 U.S.C. § 1915A on the ground that his claims of inadequate conditions of confinement and medical care, denial of access the courts, denial of due process, denial of access to policy statements and conspiracy fail to state a claim on which relief may be granted; and

(2) A strike will be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g).

Entered this 25th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge