

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

-----  
CEDRIC JOHNSON,

Plaintiff,

v.

MATTHEW FRANK, PHIL KINGSTON,  
TIM DOMA, JACK KESTIN, BILL  
PUCKETT, GARY McCAUGHTRY,  
MARC CLEMENTS, SGT. DONALD  
G. BANEY, JOANNE BARTON,  
THOMAS BORGAN, KEVIN CANNON,  
CLYDE MAXWELL, ERIN RICHARDS,  
JESS ROONEY, JASON MAC PHETRIDGE,

Defendants.  
-----

ORDER

03-C-0143-C

This is a civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Cedric Johnson, an inmate at the Waupun Correctional Institution in Waupun, Wisconsin, alleges that defendants violated his First Amendment rights by retaliating against him for filing lawsuits against prison employees.

Although plaintiff has paid the full filing fee (and thus is not proceeding in forma pauperis), his complaint must still be screened because he is a prisoner. See 28 U.S.C. §

1915A. 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 defendant who is immune from such relief. See 42 U.S.C. § 1915e.

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

#### ALLEGATIONS OF FACT

Plaintiff Cedric Johnson is currently an inmate at the Waupun Correctional Institution. Plaintiff was housed previously at the Columbia Correctional Institution and Fox Lake Correctional Institution. At the Waupun prison, defendant Gary McCaughtry is warden and defendant Marc Clements is the security director. At the Columbia prison, defendant Phil Kingston is the warden; defendant Tim Doma is the security director; and defendant Jack Kestin is the program review committee supervisor. Defendant Bill Puckett is chief of classification. At the Fox Lake prison, defendants Sgt. Donald G. Baney, Joanne Barton, Thomas Borgen, Kevin Cannon, Clyde Maxwell, Erin Richards, Jess Rooney and Jason Mac Phetridge are (presumably) correctional officers or employees.

Since June 26, 2000, plaintiff has suffered ongoing retaliation for bringing a successful

lawsuit and testifying on May 16, 2001, against Waupun correctional officers in an inmate assault case filed by Rufus West in the District Court for the Eastern District of Wisconsin. The retaliation has occurred at the Fox Lake, Columbia and Waupun prisons. After plaintiff won his lawsuit against Dr. Daley (a prison official), security officers “have been noticeably hostile and dramatically increased the number of conduct reports” they have issued to him. As a result, plaintiff’s mandatory release date has been extended from May 5, 2004 to July 2, 2005.

On January 7, 2003, plaintiff was told to appear at an unscheduled program review committee hearing. Defendant Kestin told plaintiff that he would be transferred back to the Waupun prison. Plaintiff told defendant Kestin that he feared for his life at Waupun because of his testimony in two court cases. Since being transferred to the Waupun prison, plaintiff is afraid to go to the cafeteria and to leave his cell.

On January 8, 2003, plaintiff sent a letter to defendants Kingston, Doma and Puckett telling them that he feared for his life and safety at the Waupun prison. On January 10, 2003, plaintiff arrived at the Waupun prison.

Plaintiff is suffering from chronic hepatitis, pancreatitis, cirrhosis and end-stage liver disease. He has lapsed into comas on three separate occasions. On one occasion, plaintiff was in a coma for 48 hours before correctional officers transferred him to U.W. Hospital. Plaintiff remained in a coma for seven days. An unnamed correctional officer gave plaintiff

his medication in a cup marked with a skull and crossbones.

On January 12, 2003, plaintiff informed defendants McCaughtry and Clements that he feared for his life and safety at the Waupun prison. Plaintiff was told to tell Captain O'Donovan. On either January 18 or 22, 2003, plaintiff informed Captain O'Donovan. Plaintiff sent defendant Clements a list of correctional staff who issued conduct reports for "exercising his First Amendment rights." Defendant Clements's response was that "some" of these officers no longer work at the prison.

Two unspecified correctional officers told plaintiff that they could not get a raise because of plaintiffs' lawsuit. Plaintiff reported these comments to defendant Clements.

On January 8, 2000, defendant Bandy told plaintiff, "I see you won your lawsuit; that's my tax money that's paying for your liver transplant."

Defendant Richards told plaintiff while laughing, "I knew you wouldn't win the \$325,000 reported in the newspaper." On eight occasions, defendant Richards issued plaintiff conduct reports.

Defendant Maxwell told plaintiff, "Don't let your reward go to your head." Defendant Maxwell was one of the officers involved in issuing plaintiff conduct reports.

## DISCUSSION

Prison officials may not retaliate against inmates for the exercise of a constitutional

right. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). Filing a lawsuit or testifying in a lawsuit against a prison official is protected by the First Amendment. Zorzi v. County of Putnam, 30 F.3d 885, 896 (7th Cir. 1994). The Court of Appeals for the Seventh Circuit decided recently that it was unnecessary for inmates to allege a chronology of events from which retaliation may be inferred. Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002). It is insufficient simply to allege the ultimate fact of retaliation. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). Under Higgs, all that is required to state a claim that officials retaliated against an inmate for filing a suit is for the plaintiff to identify in his complaint the act of retaliation and the lawsuit that sparked the retaliatory act.

I understand plaintiff to be alleging that all defendants knew he had filed a lawsuit against prison officials or that he had testified in inmate West's lawsuit in 2001. Also, I understand plaintiff to be alleging that the retaliatory acts were the following: (1) he was issued a number of false disciplinary reports that resulted in the loss of good time; (2) he was transferred from Columbia Correctional Institution to Waupun Correctional Institution; and (3) for two days, he was not transferred to a hospital while he was in a coma.

With respect to plaintiff's claim that he was issued false conduct reports, plaintiff does not identify specifically which defendants participated in this alleged wrongdoing, but the claim must be dismissed in any event. Plaintiff asks that his good time credits be restored immediately. Plaintiff filed his complaint under 42 U.S.C. § 1983. However, a

petition for a writ of habeas corpus under 28 U.S.C. § 2254 “is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release.” Heck v. Humphrey, 512 U.S. 477, 481 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)). The Court of Appeals for the Seventh Circuit has held that “when a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court should dismiss the suit without prejudice” for failure to state a claim upon which relief may be granted rather than convert it into a petition for habeas corpus under § 2254. Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing Heck, 512 U.S. at 477). Accordingly, plaintiff cannot seek the restoration of his good time credits in this action. In addition, he cannot seek money damages for the alleged deprivation of his good time credits in this suit. When a plaintiff questions the loss of good time credits as a result of a prison disciplinary hearing, a decision by the court whether the plaintiff’s due process rights were violated might imply that his disciplinary sentence and the loss of his good time credits or credit-earning status were invalid, even if plaintiff is seeking only money damages. The effect is the same as if the plaintiff were seeking to have his good-time credits restored. This prevents plaintiff from proceeding at this time under § 1983 on his claim that he was retaliated against for exercising his First Amendment rights when prison officials issued false conduct reports against him. Montgomery v. Anderson, 262 F.3d 641, 644 (7th Cir. 2001) (citing Edwards

v. Balisok, 520 U.S. 641, 648 (1997) (Fourteenth Amendment due process claim for money damages “that necessarily impl[ies] the invalidity of the punishment imposed is not cognizable under § 1983”). If plaintiff succeeds in having his disciplinary sentences “reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus” under 28 U.S.C. § 2254, he can file a lawsuit for money damages under § 1983 at that time. Heck, 512 U.S. at 487.

With respect to plaintiff’s claim that his transfer was retaliatory, plaintiff has identified defendant Kestin as the person who made the decision to transfer him, and defendants Doma, Kingston and Puckett as persons who knew *in advance* of the transfer that plaintiff had serious concerns for his safety at Waupun Correctional Institution and who nevertheless did not prevent the transfer from occurring. Construing plaintiff’s allegations in the light most favorable to him, I understand plaintiff to be alleging that defendants Puckett, Doma and Kingston deliberately failed to take prompt action to prevent his transfer because they wished to retaliate against plaintiff for his protected legal activities.

Plaintiff alleges that *after* his transfer, he told defendants McCaughtry and Clements that he feared for his life at Waupun. However, plaintiff does not allege that McCaughtry and Clements were personally involved in the decision to transfer him to their prison or that he suffered more retaliatory acts at the hands of McCaughtry and Clements. Therefore,

plaintiff will not be allowed to proceed on his retaliatory transfer claim against defendants McCaughtry and Clements.

Finally, and again construing the allegations of the complaint generously, I understand plaintiff to be alleging that he was subjected to retaliation when he was not sent to a hospital for two days despite the fact that he was in a coma. Plaintiff does not say that he did not receive any medical attention during those two days or even when this incident occurred. More important, he has not identified any defendant who he believes is personally responsible for this act. Accordingly, plaintiff will not be allowed to proceed on his claim that he was retaliated against for the exercise of his constitutional rights when he was not transported to a hospital for two days while he was in a coma.

Plaintiff submitted several attachments to his complaint. I have removed the attachments relating to plaintiff's claim that he is receiving conduct reports that deprive him of good time credits in retaliation for his exercise of his right of access to the courts, because this claim has been dismissed from the complaint. In addition, I have removed attachments that appear to refer to plaintiff's current medical condition as it relates to his transplant list status, as these documents appear to have no relevance to any claim he raised in his complaint against any named defendant. Finally, I am retaining in the court's file those attachments plaintiff submitted to show that he exhausted his administrative remedies with respect to his retaliatory transfer claim. Defendants are free to view the documents in the



court's file at any time if they wish to do so.

## ORDER

IT IS ORDERED that

1. Plaintiff Cedric Johnson may proceed against defendants Jack Kestin, Phil Kingston, Tim Doma and Bill Puckett on his claim that he was transferred to the Waupun Correctional Institution in retaliation for the exercise of his right of access to the courts.

2. Plaintiff's claim that he was retaliated against for the exercise of his right of access to the courts when he was issued conduct reports that resulted in a loss of good time credits is DISMISSED pursuant to 28 U.S.C. § 1915A(b)(2) because this claim can only be brought in a habeas corpus action under 28 U.S.C. § 2254.

3. Plaintiff's claim that he was retaliated against for exercising his right of access to the courts when he was not transferred to a hospital for two days while he was in a coma is DISMISSED without prejudice because plaintiff has failed to name any defendant who was personally involved in the alleged wrongdoing.

4. Defendants Matthew Frank, Gary McCaughtry, Marc Clements, Sgt. Donald G. Baney, Joanne Barton, Thomas Borgen, Kevin Cannon, Clyde Maxwell, Erin Richards, Jess Rooney and Jason Mac Phetridge are DISMISSED from this case.

5. Plaintiff is responsible for serving his complaint on defendants Kestin, Kingston,

Doma and Puckett. A memorandum describing the procedure to be followed in serving a complaint on state officials is attached to this order, along with four copies of plaintiff's complaint and blank waiver of service of summons forms.

6. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer that will be representing the defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that plaintiff has sent a copy to defendant or to defendant's attorney.

7. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 18th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge