

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

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CHARLES LAMONT NORWOOD,  
Petitioner,

ORDER  
04-C-873-C

v.

NURSE TAMMY,  
GARY HAMBLIN,  
DEPUTY C. PROCHNOW and  
OFFICER POLICH,

Respondents.

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CHARLES LAMONT NORWOOD,  
Petitioner,

04-C-887-C

v.

DANE COUNTY NURSES, SHAYA, DUSTIN,  
ANN REENTS,

Respondents.

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CHARLES LAMONT NORWOOD,

Petitioner,

04-C-899-C

v.

DEPUTY HANVOLD,

Respondent.  
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These are civil actions brought pursuant to 42 U.S.C. § 1983. When petitioner filed these complaints, he was confined at the Dane County jail in Madison, Wisconsin. Now he has been transferred to the Dodge Correctional Institution in Waupun, Wisconsin.

In the short time that petitioner was confined at the Dane County jail, he filed a total of six lawsuits. In each of them, petitioner sought leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. Taking petitioner's complaints in the order in which he filed them, I screened them pursuant to 28 U.S.C. § 1915(e)(2).

In Norwood v. Hamblin, 04-C-813-C, the first of petitioner's complaints, petitioner alleged that respondents' refusal to give him inmate grievance forms violated his constitutional right of access to the courts. I gave petitioner an opportunity to amend the complaint to allege facts from which an inference could be drawn that he suffered an actual

injury, a necessary element to a viable claim of denial of access to the courts, but petitioner failed to do so. On November 24, 2004, I denied petitioner's request for leave to proceed in forma pauperis and dismissed the action for failure to state a claim upon which relief may be granted. I recorded a strike against petitioner in that same order.

In Norwood v. Hamblin, 04-C-846-C, the next of petitioner's complaints, petitioner alleged that his Eighth Amendment rights were violated when he was deprived of a shower for at least a two-week period. In an order dated November 24, 2004, I denied petitioner leave to proceed on this claim, because the facts alleged did not rise to the level of an Eighth Amendment violation. At that time, I recorded a second strike against petitioner pursuant to 28 U.S.C. § 1915(g).

Next, in Norwood v. Hamblin, 04-C-854-C, petitioner alleged that respondents were violating his constitutional right of access to the courts by refusing to give him more than four postage-paid envelopes and a small pad of paper each week and free photocopies of legal materials. Once again, I gave petitioner an opportunity to amend his complaint to allege an actual injury stemming from respondent's policy. When petitioner failed to do so, I denied his request for leave to proceed in forma pauperis on December 2, 2004 and recorded a third strike against him under § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Because on at least three prior occasions, I have denied petitioner leave to proceed in forma pauperis because his complaints failed to state a claim upon which relief may be granted, petitioner is now ineligible to receive pauper status in any other civil action he files in the federal court while he is imprisoned unless the complaint alleges facts from which it appears that he is under imminent danger of serious physical injury. None of the three remaining lawsuits that petitioner has filed is such a case.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)).

In Norwood v. Nurse Tammy, 04-C-873-C, petitioner alleges that he was forced to take a cell assignment in the segregation unit of the Dane County jail that was directly across the corridor from an inmate who had tested positive for tuberculosis at some earlier time.

Petitioner sought an injunction directing that he be moved away from this inmate. Because petitioner now has been transferred to the Dodge Correctional Institution, he cannot claim that he faces a real and proximate threat of physical injury with respect to this alleged unconstitutional prison condition.

In Norwood v. Dane County Nurses, 04-C-887-C, petitioner alleges that nurses at the Dane County jail failed to provide him various medical diagnostic tests and a special shampoo for his dry scalp, allegedly in violation of his Eighth Amendment rights. Again, because petitioner is no longer at the Dane County jail, he cannot show that he is faces any real and proximate threat of physical injury on account of this past circumstance.

Finally, petitioner alleges in Norwood v. Hanvold, 04-C-899-C, that in September of 2004, while he was housed in the Trempealeau County Jail in Whitehall, Wisconsin, respondent Hanvold shoved him into a cell, causing him to stumble two steps forward. In this action, petitioner seeks money damages for respondent's alleged use of excessive force. However, nothing in petitioner's allegations allows an inference to be drawn that he is in imminent danger of a serious physical injury stemming from this incident.

In summary, none of petitioner's three remaining complaints is a complaint requiring application of the exception to § 1915(g). Therefore, petitioner is disqualified from proceeding in forma pauperis in these cases.

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g),

he may choose to pursue these cases as a paying litigant. If he chooses this route, he must submit a check or money order made payable to the clerk of court in the amount of \$150 for each case he wishes to prosecute and his payment must be received no later than January 7, 2004. Petitioner should be aware that even if he pays the fee for filing these actions, the court will be required to screen his complaints under 28 U.S.C. § 1915A, and dismiss any case in which the complaint 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.

If petitioner does not pay the \$150 filing fee for these cases by January 7, 2004, I will consider that he does not want to pursue these actions. In that event, the clerk of court is directed to close these files. However, even if the files are closed, petitioner will still owe the \$150 filing fee for each action and he must pay the fee as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). From the trust fund account statement petitioner filed in case no. 04-C-813-C, it is clear that he does not presently have the means to pay the fees from his prison account. Therefore, unless he is successful in obtaining the money from some other source, I will advise the warden of the Dodge Correctional Institution of petitioner's obligation to pay the fees so that if and when funds do exist in petitioner's account, the fees can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner's requests for leave to proceed in forma pauperis in these actions are DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until January 7, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$150 for each of the cases listed in the caption of this order. If, by January 7, 2004, petitioner fails to pay the fee for filing these cases, the clerk of court is directed to close these files.

Entered this 10th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge