

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

MATTHEW J. FRANK; PETER HUIBREGTSE;
GARY BOUGHTON; STEVEN HOUSER;
CAPTAINS STEVE SCHUELER, THOMAS
CORE, KURT LINJER, GILBERG and
GARY BLACKBOURN; C.O. LANGE and
SGT. CARPENTER,

Respondents.

ORDER

05-C-003-C

In an order dated March 8, 2005, I granted plaintiff leave to proceed in forma pauperis on his claim that defendants Frank, Huibregtse, Boughton, Houser, Schueler, Core, Linjer, Blackbourn, Lange, Gilberg and Sgt. Carpenter violated his equal protection rights when they conspired to harm him because of his political, philosophical or religious views.

I denied plaintiff leave to proceed in forma pauperis on his claims that:

1. His Fourteenth Amendment due process rights were violated when he was disciplined for failing to comply with a regulation that is too vague to allow a reasonable

person to comply with it;

2. His First Amendment right to freely exercise his religion and his rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § § 2000cc-2000cc-5, were violated when he was disciplined for his violation of a regulation that is overbroad;

3. His Fourteenth Amendment equal protection rights and his rights under the First Amendment establishment clause are being violated by defendants' decision to allow inmates to possess Bibles and Quar'ans but not his Wotanist literature;

4. His rights under the Fourteenth Amendment due process clause were violated when he was disciplined without first receiving procedural safeguards such as fair notice of the charge and an opportunity to prepare a defense and appeal;

5. His rights under the Fourteenth Amendment due process clause were violated when defendants failed to produce any evidence of wrongdoing at his disciplinary hearing justifying imposition of the punishment he received; and

6. His Sixth Amendment right of access to the courts was violated when defendants Carpenter and Blackburn refused to make part of the disciplinary record plaintiff Lindell's statement objecting to the discipline imposed.

Now plaintiff has filed a document titled "Lindell's Notice and Motion Pursuant to Fed. R. Civ. P. 59(e) With Affidavit in Support," which I construe as a motion for reconsideration of the March 8 order.

In support of his motion, plaintiff says that I overlooked a claim that he raised under the First Amendment, that his free speech rights were violated when he was punished for writing a letter to another inmate containing “expressive material which defendants labeled gang-related” and the letter was destroyed.

The attachments to plaintiff’s complaint reveal that plaintiff was charged and found guilty in conduct report no. 1230298 with violating the rules against “group resistance and petitions” when he tried to send a letter to another inmate referencing several times the unsanctioned group the “Aryan Circle,” and stating, “I can think of 88 reasons why America’s fucked up.” (According to the conduct report, “the letter H is the eighth letter of the alphabet and 88 is used by various white supremacist organizations to illustrate “Heil Hitler.”) In addition, petitioner was charged and found guilty in conduct report no. 1335594 of violating the rules against “group resistance and petitions” when prison officials discovered another letter petitioner had written to another inmate in which he stated, “I’m cool, doing legal work & the usual routine, some tolerable dudes by me, but not a wood in sight,” and “Well, I don’t know if I said this, but a Nubian gave me an affidavit that reveals staff purposefully put a white-separatist in a cell with him and told him “he doesn’t like blacks” basically trying to set up a wood.” According to the conduct report, “Both uses of the word “wood” in this context refers to “Peckerwood,” which is a common word used by White Supremists . . . [and] a faction of the . . . Aryan Circle.” Also according to the conduct

report, plaintiff's letter was written to another inmate whose membership in the Aryan Circle was known.

Although plaintiff is correct that this court failed to identify in its March 8, 2005 order a potential First Amendment claim relating to the confiscation of plaintiff's inmate-to-inmate correspondence, the omission is of no moment. In another of plaintiff's cases, Lindell v. Litscher, 02-C-21-C, plaintiff complained that his First Amendment free speech rights had been violated when prison officials confiscated and destroyed a letter he had written to another inmate in which he called the inmate an idiot for affiliating with the "Bloods" gang. In dismissing plaintiff's claim as legally meritless, I advised him that prison regulations restricting inmate-to-inmate correspondence concerning gang-related matters are constitutional, because prison officials have a legitimate security interest in preventing one inmate from writing letters containing gang-related messages or content to another inmate. Turner v. Safley, 482 U.S. 78, 93 (1987). The importance of this interest has been found in numerous cases, e.g., Fraise v. Terhune, 283 F.3d 506 (3d Cir. 2002); Young v. Lane, 922 F.2d 370 (7th Cir. 1991); Hadi v. Horn, 830 F.2d 779 (7th Cir. 1987); Rios v. Lane, 812 F.2d 1032 (7th Cir. 1987).

Plaintiff attempts to compare his First Amendment claim to the First Amendment claim recognized in Koutnik v. Berge, Case No. 03-C-345-C, but Koutnik did not involve inmate-to-inmate correspondence. In Koutnik, prison officials confiscated a letter it believed

included gang-related content that Koutnik had addressed to his brother outside the prison. Koutnik's brother was not a prisoner in another institution. Therefore, in that case, the allegations did not support an inference that a legitimate penological interest in prison security justified the letter's confiscation. Plaintiff's case is inapposite. His letters were addressed to other inmates. Because he has no protected First Amendment right in freely expressing what has been deemed gang-related expression to other inmates, his request for leave to proceed in forma pauperis on the claim will be DENIED on the ground that it is legally meritless.

The remaining arguments plaintiff makes in his motion for reconsideration are nothing more than a rehash of matters I considered carefully and completely in the March 8 order. Nothing in those arguments convinces me that I made legal errors in construing plaintiff's potential legal claims or applying the law relevant to those claims.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of this court's March 8, 2005, order is DENIED, except to the extent that the order fails to address plaintiff's First Amendment free speech claim. Now that plaintiff has brought the First Amendment claim to my attention and I have had an opportunity to consider the merits of that claim, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis is DENIED on his

claim that his First Amendment free speech rights were violated when defendants confiscated his letters to other inmates because they included gang-related content.

Entered this 2nd day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge