IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KURT W. MEYER,

ORDER

Plaintiff,

05-C-269-C

v.

MARK TESLIK,

Defendant.

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On May 26, 2005, I granted plaintiff Kurt W. Meyer leave to proceed in forma pauperis in this action against defendant Mark Teslik on plaintiff's claim that Teslik, the chaplain at the New Lisbon Correctional Institution, deprived plaintiff of his right to practice his Native American religion between June 26, 2004 and October 1, 2004. I denied plaintiff leave to proceed against proposed defendants Catherine Farrey, John Ray and Richard Raemisch for two reasons. First, each of these persons affirmed plaintiff's inmate complaint concerning his inability to attend religious services. Nothing in plaintiff's factual allegations suggested that they had participated in denying plaintiff his right to practice his religion. Second, persons making recommendations for the disposition of inmate complaints are entitled to absolute immunity from suit. Tobin for Governor v. Illinois State Board of

Elections, 268 F.3d 517, 522 (7th Cir. 2001) (officials making recommendation entitled to immunity just as magistrate judge who makes recommendation to district court would be); Wilson v. Kelkhoff, 86 F.3d 1438, 1445 (7th Cir. 1996) (absolute immunity protects against both actual decision making and any act that is "part and parcel" of the decision making process).

On June 1, 2005, plaintiff filed a motion for leave to file an amended complaint, which I denied without prejudice on June 6, 2005, stating that he could refile his motion with a proposed amended complaint that conformed to this court's pleading standards. Plaintiff filed such an amended complaint on June 16, 2005, which is now before the court. Plaintiff's proposed amended complaint attempts to restore respondents John Ray, a corrections complaint examiner, and Catherine Farrey, warden at New Lisbon Correctional Institution, to the action and add two more respondents, Jill Sweeney, an inmate complaint investigator, and Sandra Scorton-Reynolds, a crisis intervention worker. In addition, plaintiff's proposed amended complaint attempts to add assertions of violations of due process under 28 U.S.C. § 1983 and conspiracy under 18 U.S.C. § 241[1] and 42 U.S.C. § 1985. Finally, plaintiff's proposed amended complaint attempts to claim that respondent Farrey's duties as warden make her responsible for denying him access to Native American

[1] 18 U.S.C. § 241 allows for criminal prosecutions of conspiracy, which are within the discretion of federal prosecutors.

religious services between June 26, 2004 and October 1, 2004.

ALLEGATIONS OF FACT

Plaintiff alleges that on November 8, 2004, respondent Ray contacted respondents Farrey, Teslik and Sweeney and one or all of them told him that plaintiff had been attending weekly pipe and drum services since July 2004. However, plaintiff did not start attending those services until October 1, 2004. The false information provided by respondents Farrey, Teslik and Sweeney prohibited respondent Ray from conducting an accurate investigation into plaintiff's complaint regarding the denial of access to religious services between June 26, 2004 and October 1, 2004.

Plaintiff alleges also that on April 13, 2005, he contacted the prison psychologist, Linda Nauth, to review his psychological records. That same day, plaintiff found two psychological service clinical contact reports by respondent Sandra Scorton-Reynolds dated July 22, 2004 and August 31, 2004 in which Scorton-Reynolds noted that plaintiff participates in Native American religious activities. On September 30, 2004, plaintiff wrote an interview request slip asking Scorton-Reynolds whether she remembers two specific conversations that she had with plaintiff about respondent Teslik's denying plaintiff

participation in Native American groups. On August 30, 2004[2], respondent Scorton-Reynolds called plaintiff to her office to respond to the request slip dated September 30, 2004. When plaintiff arrived at Scorton-Reynolds's office, she asked him whether she was being sued or asked to be a witness for a legal action. Plaintiff explained that she may answer the interview request however she wished. Respondent Scorton-Reynolds explained that she would confer with her supervisor, Sandra Frodin, about how to answer plaintiff's request and stated that she remembered the conversations about plaintiff's participation in Native American groups but that she would not write those recollections on paper. Therefore, respondent Scorton-Reynolds knew that plaintiff did not attend religious activities as she had stated in her written reports.

DISCUSSION

Plaintiff asserts that respondents Farrey, Sweeney, Teslik and Scorton-Reynolds all conspired against him by giving false information regarding his participation in Native American services from June 26, 2004 to October 1, 2004, thereby depriving him of due process in the investigation conducted by respondent John Ray.

Claims of conspiracies to effect deprivations of civil or constitutional rights may be

[2]This date must be a mistake. Plaintiff could not have been interviewed about his September 30, 2004 request slip 30 days before he wrote it.

brought in federal court under 42 U.S.C. § 1983 or §1985(3). In pleading a conspiracy, it is sufficient for a plaintiff to indicate "the parties, general purpose, and approximate date, so that the defendant has notice of what he is charged with." Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002).

Although plaintiff names the parties and date of the alleged conspiracy, plaintiff fails to allege the general purpose of the conspiracy. Plaintiff asserts that "one or all" of respondents Farrey, Teslik and Sweeney told respondent Ray that plaintiff had been attending Native American services since July 2004. However, by the time respondent Ray questioned respondents Farrey, Teslik and Sweeney about plaintiff's participation in Native American services in November 2004, plaintiff had been attending those services for over one month. At that point, any harm that the alleged conspirators would have wanted to inflict upon plaintiff had already passed. The same is true for defendant Scorton-Reynolds. Plaintiff did not ask Scorton-Reynolds for information regarding conversations that she had with him about respondent Teslik's denying plaintiff participation in Native American groups until September 30, 2004. Her failure to supply the information falls short of an allegation sufficient to implicate her in a conspiracy to prevent plaintiff from practicing his religion in late June and during the months of July, August and September 2004.

Plaintiff fails to state a due process claim as well. Plaintiff appears to be alleging that defendant Ray, the complaint examiner, deprived him of due process in connection with his

inmate complaint by providing false information regarding his participation in Native American religious services. A procedural due process claim against a government official requires proof of inadequate procedures *and* interference with a liberty or property interest. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). Therefore, if defendant Ray did not affect a protected liberty interest, his action did not violate plaintiff's Fourteenth Amendment right to due process. In Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that although "States may under certain circumstances create liberty interests which are protected by the Due Process Clause," those 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, state-created protected liberty interests are limited essentially to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. 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 does not have a liberty interest in mere procedural guidelines governing inmate complaints. See, e.g., Culbert v. Young, 834 F.2d 624, 628 (7th Cir. 1987); Studway v. Feltman, 764 F. Supp.133, 134 (W.D. Wis. 1991). Therefore, plaintiff fails to state a due process claim. Because plaintiff's proposed amendments fail to state a claim

upon which relief may be granted, I will deny his potion for leave to file an amended complaint.

ORDER

IT IS ORDERED that plaintiff Kurt W. Meyer's motion to amend his complaint to state claims of conspiracy and a procedural due process violation against defendants Catherine J. Farrey, Mark Teslik, Sandra Scorton-Reynolds and Jill Sweeney is DENIED.

Entered this 21st day of June, 2005.

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