

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

JONATHON M. MARK,

Plaintiff,

v.

ORDER

05-C-279-C

Off. IMBERG; Capt. HANSON; Capt. SCHULTZ;
Chaplain OLSON; Off. GUSTAFSON; Sgt. McARTHER;
Sgt. MESHUN; UNIT PSYCHOLOGIST (MELROSE - JANE DOE);
UNIT PSYCHOLOGIST Unit Psychologist (Oxbow - JOHN DOE);
Lt. DOHMS; Unit Manager DOUGHERTY;
Mr. BROWN (head of PRC); and STEVEN M. PUCKETT,

Defendants.

This is a civil action for declaratory, injunctive and monetary relief brought under 42 U.S.C. § 1983. At the time he filed his complaint, plaintiff Jonathon M. Mark was confined at the Chippewa Valley Correctional Treatment Facility in Chippewa Falls, Wisconsin. He was allowed to proceed on the following claims:

1. Defendants Imberg, Hanson, Schultz and Olson violated his rights under the First Amendment by denying him a religious publication entitled “Llewellyn”;
2. Defendants Imberg and Olson violated his rights under the equal protection clause

of the Fourteenth Amendment by denying him a religious publication entitled “Llewellyn”;

3. Defendants Gustaffson and McArther violated his rights under the First Amendment by destroying his magical seals;

4. Defendant Olson retaliated against him for filing an inmate complaint by withholding plaintiff’s religious publications;

5. Defendant Meshun retaliated against plaintiff for causing Meshun to be investigated for showing favoritism toward another inmate by changing plaintiff’s room assignment and transferring him “off the unit”;

6. Defendants Unit Psychologist (Melrose - Jane Doe) and Unit Psychologist (John Doe) - Oxbow violated plaintiff’s Eighth Amendment protection against cruel and unusual punishment by not providing him with sufficient treatment and medication for his schizophrenia;

7. Defendants Dohms, Dougherty, Brown and Puckett conspired to violate plaintiff’s right of access to courts by transferring him to a correctional institution that lacked legal resources he needed to initiate this lawsuit and to pursue his motion for post-conviction relief.

On August 15, 2005, defendants moved to dismiss the first six of plaintiff’s claims on the ground that he failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997e. In addition, defendant Dougherty asked to be dismissed from the seventh claim

on the ground that plaintiff failed to exhaust his administrative remedies as to him. In support of their motion, defendants submitted the relevant record of plaintiff's use of the inmate complaint review system for the time period relating to his claims.

On August 22, 2005, the court established a schedule for briefing plaintiff's motion. According to the schedule, plaintiff had until September 12, 2005, in which to oppose the motion. However, on August 29, 2005, plaintiff wrote to ask that he be allowed 30 extra days to respond to the motion because he was being released from prison sometime between August 30 and September 6, 2005, and would need a short period of time to settle into his new residence. The court granted plaintiff's request. On August 31, 2005, the briefing schedule was modified to allow plaintiff until October 12, 2005, in which to oppose defendants' motion.

Now plaintiff has written a letter dated October 9, 2005, asking for another 60 days in which to oppose defendants' motion. In his letter, plaintiff says that he was released from the Wisconsin prison system on September 7, 2005, but that on September 27, 2005, he was picked up on a parole hold and placed in the Fond du Lac County jail. Plaintiff says he has no idea how long he will be detained at the jail, but that "this incarceration could be indefinite." He states that at the jail, he does not have access to a law library and that he does not have friends or family "willing to retrieve any legal materials for [him] from the public library or the Internet." He says he had to "gamble" to get paper and an envelope to

send the court his letter of October 9 and that he might not be able to communicate with the court again because he has no money to purchase postage stamps or paper. Finally, he says that he has not sent a copy of his October 9 letter to counsel for the defendants because he could not get enough paper to hand-write a second copy.

As an initial matter, I note that plaintiff used four sheets of paper to write his letter to the court. He could have used both sides of the paper and had a sufficient supply to send a copy to opposing counsel. He chose instead to squander the little resources he had. Although on this one occasion I will send a copy of plaintiff's letter to counsel for the defendants with a copy of this order, I will not consider any future filing from plaintiff that does not show clearly that he sent a copy to opposing counsel as required by Fed. R. Civ. P. 5.

Plaintiff's request for a second enlargement of time in which to oppose defendants' motion to dismiss will be denied. Plaintiff does not need a law library to respond to defendants' averments that he failed to exhaust his administrative remedies. If he possessed evidence that he filed an inmate complaint on an issue that defendants say he did grieve or that he took an appeal from a dismissal of an inmate complaint that defendants say he did not take, then he could have submitted that evidence sometime between September 7 and September 27, 2005, before he was re-incarcerated. I do not intend to delay resolution of defendants' motions for 60 days or "an indefinite period" simply because plaintiff is now

confined at the Fond du Lac County jail and does not have access to a law library.

ORDER

IT IS ORDERED that plaintiff's motion for an enlargement of time in which to oppose defendants' motion to dismiss is DENIED.

Entered this 19th day of October, 2005.

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