

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

GARY B. CAMPBELL,

Plaintiff,

v.

CAPTAIN NYKLEWICK and
CAPTAIN PARADISE,

Defendants.

ORDER

05-C-481-C

In an order dated November 3, 2005, I denied plaintiff Gary Campbell leave to proceed in forma pauperis in this action on several claims, including a claim that defendants were violating his First Amendment rights by refusing to deliver mail to his jail pod on Sundays and Mondays. I told plaintiff that the law in this circuit is settled that periodic or short-term delays in receiving mail do not implicate constitutional concerns. Sizemore v. Wlliford, 829 F.2d 608, 610 (7th Cir. 1999); Zimmerman v. Tribble, 226 F.3d 568, 572-73 (7th Cir. 2000); Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). Now plaintiff has filed a motion for reconsideration of this ruling, arguing that if his allegations do not support a First Amendment claim, then he wishes to argue that the delays violate his due process and

equal protection rights under the Fourteenth Amendment. This argument is unavailing. Plaintiff is not similarly situated to unincarcerated persons who receive mail delivery on Mondays, so he cannot claim a violation of his equal protection rights. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985) (equal protection clause guarantees "all persons similarly situated should be treated alike"). Nor does plaintiff state a claim that he is being deprived of his property so as to trigger procedural due process protections under the Fourteenth Amendment. A delay in receiving property does not constitute the kind of taking that would require a pre-deprivation hearing. Plaintiff may prefer to receive his mail six days a week, but even unincarcerated individuals are not entitled under the constitution to receive such service. There is simply no legal merit to plaintiff's arguments that the short-term delays he is experiencing in receiving his mail at the Milwaukee County jail violates any of his constitutional rights.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of this court's decision to deny him leave to proceed in forma pauperis is DENIED with respect to his claim that

the delays he experiences in receiving mail violates his constitutional rights.

Entered this 17th day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge