

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

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JIMMY BRIDGES,

Plaintiff,

v.

MEMORANDUM and ORDER

J. HUIBREGTSE, TIM GILBERG, LINDA  
HODDY, MONICA HORNER, COOK, GARY  
BOUGHTON, ELLEN K. RAY, KELLY TRUMM,  
CHRISTINE BEERKIRCHER,  
Defendants.

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06-C-544-S

Plaintiff was allowed to proceed on his First Amendment retaliation claims against defendants J. Huibregtse, Tim Gilberg, Linda Hoddy, Monica Horner, Sgt. Cook, Gary Boughton, Ellen K. Ray, Kelly Trumm and Christine Beerkircher. He alleges that defendants Huibregtse, Gilberg, Hoddy and Horner interfered with his mail. He further alleges that defendants Cook and Boughton brought false disciplinary charges against him and that defendants Trumm, Ray and Beerkircher denied his grievances. He alleges that these actions were taken in retaliation for his assistance of Eunice Powe, the wife of inmate Donnie Powe, in a wrongful death suit against the Department of Corrections.

Defendant filed a motion to dismiss plaintiff's complaint on November 8, 2006. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

#### FACTS

For purposes of deciding defendants' motion to dismiss the facts as alleged in plaintiff's complaint are taken as true.

Plaintiff Jimmy Bridges is an inmate at the Wisconsin Secure Program Facility, Boscobel, Wisconsin (WSPF). Defendants J. Huibregtse, Tim Gilberg, Monica Horner, Gary Boughton, Ellen Ray, Kelly Trumm and Christine Beerkircher are employed at WSPF. Defendant Linda Hoddy is employed by the Wisconsin Department of Corrections (DOC).

In March 2005 plaintiff assisted Eunice Powe and her lawyers in their wrongful death lawsuit against the DOC. Plaintiff provided an affidavit in support of Powe's claim concerning the death of her husband Connie Powe who had been an inmate.

Defendants Huibregtse, Gilberg, Hoddy and Horner retaliated against plaintiff for this assistance by interfering with his mail. Defendants Cook and Boughton retaliated against him by bringing false charges against him. Defendants Trumm, Ray and Beerkircher retaliated against him by denying his grievances.

#### MEMORANDUM

Although defendants move to dismiss some of the defendants for plaintiff's failure to exhaust his administrative remedies, the Court will address their motion to dismiss the plaintiff's retaliation claim on its merits. Defendants move to dismiss plaintiff's retaliation claims contending that plaintiff's conduct was not protected by the First Amendment.

To state a First Amendment retaliation claim plaintiff's speech and/or conduct must be protected by the First Amendment. Plaintiff alleges that he assisted Eunice Powe, the wife of inmate Donnie Powe, in her wrongful death suit against the DOC. Plaintiff does not contend that he was exercising his First Amendment right to petition the court on his own behalf.

The Court must determine whether plaintiff's conduct in assisting Eugene Powe was protected by the First Amendment. In Brookins v. Kolb, 900 F. 2d 308 (7<sup>th</sup> Cir. 1992), the United States Court of Appeals for the Seventh Circuit addressed an inmate claim that he was retaliated against for writing a letter requesting an

investigation into conduct reports issued against another inmate. The Court found that the inmate's letter was not protected speech because it was not about a matter of public interest or concern. The Court found that the letter dealt with a matter personal to the other inmate.

This case is similar to Brookins. Plaintiff provided an affidavit in a wrongful death suit which was personal to Powe and did not address a change in prison policies or procedures which might rise to the level of a public concern. Accordingly, plaintiff's speech and/or conduct in support of Powe's suit was not protected speech.

Since plaintiff's speech was not protected, his retaliation claims must be dismissed. Defendants' motion to dismiss will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

#### ORDER

IT IS ORDERED that defendants' motion to dismiss is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein without prejudice.

Entered this 8<sup>th</sup> day of January, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge