

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

DWAYNE ALMOND,

Petitioner,

v.

STATE OF WISCONSIN, GREEN
BAY WARDEN OF PRISON, MR. LT.
SWIEKATOWSKI of prison, CO II
OFFICER WALTON of prison, MS. NURSE
JEAN LUTSKEY of prison, MS. MARY
BREEN, doctor, MS. SARAH COOPER,
Supervisor, MR. LT. LeSATZ,

Respondents.

ORDER

06-C-559-C

DWAYNE ALMOND,

Petitioner,

v.

STATE OF WISCONSIN, GREEN
BAY WARDEN OF PRISON, MR. LT.
SWIEKATOWSKI of prison, CO II
OFFICER WALTON of prison, MS. NURSE
JEAN LUTSKEY of prison, MS. MARY
BREEN, doctor, MS. SARAH COOPER,

ORDER

06-C-560-C

Supervisor, MR. LT. LeSATZ,

Respondents.

DWAYNE ALMOND,

Petitioner,

ORDER

v.

06-C-561-C

STATE OF WISCONSIN, GREEN
BAY WARDEN OF PRISON, MR. LT.
SWIEKATOWSKI, MS. SARAH COOPER,
Supervisor, MS. DR. BREEN, psychologist,
MR. MARK ZIMONICK, social worker,
MR. LT. LeSATZ, MR MICHAEL J. MOHR,
ICE Dept.,

Respondents.

These three cases are the last in a series of six proposed civil actions for monetary relief filed this week by petitioner Dwayne Almond, an inmate at the Green Bay Correctional Institution in Green Bay, Wisconsin. In orders dated August 23, 2006, I denied petitioner leave to proceed in forma pauperis in Case Nos. 06-C-447-C, 06-C-448-C and 06-C-449-C because the claims he raised in those lawsuits were legally meritless. Consequently, I issued petitioner one strike for each of his meritless lawsuits, as I was required to do under 28 U.S.C. § 1915(g). As I explained to petitioner in an order dated August 24, 2006, in Case

No. 06-C-450-C, because he has accumulated three strikes under § 1915(g), he may not seek pauper status in this or any future civil action or appeal “unless [he] is under imminent danger of serious physical injury.” Nevertheless, petitioner has persisted in filing lawsuits in this court that do not include allegations that he is in imminent danger of serious physical injury. In the span of two months, petitioner has accumulated filing fees of more than \$4,000.

When a prisoner persists in filing appeals or new complaints that do not qualify for the imminent danger exception to § 1915(g) and those filings are not accompanied by the filing fee, he not only owes the fee for filing each new case or appeal, but he may be subject to an order of the kind specified in Support Systems International, Inc. v. Mack 45 F.3d 185 (7th Cir. 1995). Under Mack, the clerks of every court in the circuit must return to a petitioner, unfiled, any papers the petitioner sends to the court in any civil litigation other than a collateral attack on a criminal conviction until he satisfies the sanction or penalty specified in the order. Id. at 186. Although I will not impose a Mack order on petitioner at this time, if he requests leave to proceed in forma pauperis in any future lawsuits that do not qualify for the imminent danger exception to § 1915(g), I will restrict his future filings until his debts to the court have been paid.

With the respect to the three above-captioned cases, my review of petitioner’s complaint is limited to determining whether he has alleged that he is in imminent danger of

such injury. Because he has not done so, petitioner's requests to proceed in forma pauperis will be denied.

Petitioner's complaints in these three cases allege nearly identical facts; therefore, I will consolidate my analysis by addressing all of them in a single order. In his complaints, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Dwayne Almond is a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin. He is 40 years old and suffers from paranoid schizophrenia, psychosis and mental retardation.

From May 3, 2006 to May 8, 2006, respondent Swiekatowski placed petitioner in controlled segregation. Prisoners in controlled segregation status are not given shoes, a mattress or linens. This was the first time petitioner had ever been placed in controlled segregation.

While in segregation, petitioner's feet were bitten by a bug. As a result, his feet became swollen. Six days after petitioner was released from segregation, respondent Walton took him to the prison health services unit. Although petitioner asked to be taken to the emergency room, medical staff refused to take him there. Instead, respondent Lutskey gave petitioner some pain medication that did nothing to alleviate his discomfort.

On June 16, 2006, petitioner was placed again in controlled segregation for a period of “three or four days”. Again, his feet were bitten by bugs. Petitioner was without shoes for a period of approximately one month.

OPINION

Petitioner alleges that he was placed in segregation for five days in May 2006 and for three or four days in June 2006. During those times, he suffered from bug bites. Prison officials provided him with some pain medication, but did not transport him to the emergency room as he requested. Petitioner appears to believe that prison officials violated his Eighth Amendment rights by placing him in controlled segregation, refusing to provide him with shoes for a period of approximately one month and refusing to take him to the hospital emergency room after he was bitten. Petitioner does not indicate that he continues to suffer from swollen feet or that prison officials have continued to expose him to a serious risk of physical injury. Petitioner seeks only money damages for the past denial of medical treatment.

As discussed above and in the court’s previous opinions, because petitioner has filed three legally frivolous lawsuits, he is barred from proceeding in forma pauperis unless he alleges that he is in imminent danger of serious physical harm. His allegations in these cases do not suggest that he is in immediate danger of harm; consequently, his request for leave

to proceed in forma pauperis will be denied. Nevertheless, petitioner must pay the \$350 fee for filing each of these actions, whether or not he intends to pursue them. If petitioner does not pay the fees by October 20, 2006, the clerk of court is directed to close these cases and notify the warden of the Green Bay Correctional Institution of petitioner's obligation to pay the fees. It will be up to the warden to determine how amounts deposited to petitioner's account, if any, might be utilized to pay petitioner's debt to this court, even though the installment provision of 28 U.S.C. § 1915(b)(2) does not apply to petitioner. Dallas v. Gamble, slip op. WL 2371346 (W.D. Wis. Aug. 14, 2006).

ORDER

IT IS ORDERED that petitioner Dwayne Almond's request to proceed in forma pauperis is DENIED with respect to Case Nos. 06-C-559-C, 06-C-560-C and 06-C-561-C.

Further, IT IS ORDERED that petitioner may have until October 20, 2006, in which to pay the \$350 fee for filing each action. If, by October 20, 2006, petitioner fails to pay the required filing fees, the clerk of court is directed to close these cases and notify the warden of the Green Bay Correctional Institution of petitioner's obligation to pay the filing

fees.

Entered this 5th day of October, 2006.

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