IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

RICHARD SCHNEITER, GARY BOUGHTON, PETER HUIBREGTSE, RICK RAEMISCH, SANDRA HAUTAMAKI, ELLEN RAY, GERALD BERGE, CAPTAIN MONICA HORNER, THOMAS CRAVENS and SGT. STEVEN WRIGHT,

Defendants.

ORDER

06-C-608-C

- -

In this civil action for monetary and injunctive relief, plaintiff Nathaniel Lindell contends that defendants Richard Schneiter, Gary Boughton, Peter Huibregtse, Rick Raemisch, Sandra Hautamaki, Ellen Ray, Gerald Berge, Monica Horner, Thomas Cravens and Steven Wright exhibited deliberate indifference to his health by denying him access to adequate amounts of sunlight and by promulgating and enforcing policies that require him to wear clothing contaminated with other inmates' bodily fluids. In addition, plaintiff contends that defendants violated his rights under the First Amendment by refusing temporarily to admit him to the Wisconsin Secure Program Facility's High Risk Offender

Program in retaliation for his filing lawsuits and grievances.

Now before the court are plaintiff's "Motion for Court to Order Defendants to Provide Plaintiff Legal Loan" and motion for appointment of counsel. Also before the court is plaintiff's request for copies of journal articles cited by the court in its November 13, 2006 screening order. Because this court lacks the authority to order state officials to provide plaintiff with a legal loan in the context of this lawsuit, plaintiff's request for a court-ordered legal loan will be denied. Plaintiff's chances of success on the merits of his claims are slim and expert resources required to litigate his claim are likely to exceed those even a lawyer could obtain for him. Therefore, his motion for appointment of counsel will be denied. Finally, plaintiff's requests for court-produced photocopies of resource materials will be denied because the court lacks the resources to perform tasks the prison librarian should be able to perform on plaintiff's behalf.

I. "MOTION FOR COURT TO ORDER DEFENDANTS TO PROVIDE PLAINTIFF LEGAL LOAN"

Plaintiff's first request is somewhat unusual. Plaintiff contends that although he is indigent (and been for quite some time, as is evidenced by the many thousands of dollars he has accrued in unpaid filing fees over the years), he received an unspecified sum of money in mid-January 2007 as a settlement for damage caused to some of his personal items during

a cell search. Plaintiff spent most of the money on litigation-related costs (photocopying, buying paper and envelopes, etc.). However, he spent approximately $8 on "shampoo, deodorant, vitamins and toiletries" not provided by the prison.

Since that time, the prison's account supervisor, J. Dressler, has refused to allow plaintiff access to his legal loan funds, contending that he is not indigent and will not be considered indigent until he has been without funds for a period of six months. Plaintiff believes that Dressler is denying him legal loan funds in retaliation for his successful grievance. He asks the court to order Dressler to provide him with a legal loan so he may fund his litigation efforts in this case.

It is unclear how far prisons must go in helping prisoners litigate civil rights lawsuits. In Bounds v. Smith, 430 U.S. 817, 824-25 (1977), the Supreme Court held, "It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them." Later court of appeals decisions have elaborated on Bounds, noting that

> [b]eing able to formulate abstract legal theories is insufficient to give access to the courts without the physical means of filing a complaint based on those theories. Necessary scribe materials include paper, some means of writing, staplers, access to notary services where required by procedural rules, and mailing materials. Of course, prisoners are not entitled to limitless supplies of such materials, merely to that amount minimally necessary to give them meaningful access to the courts.

Gentry v. Duckworth, 65 F.3d 555, 558 (7th Cir. 1995) (footnote omitted). Despite courts'

willingness to suggest that prisons have some affirmative duty to assist prisoners in securing minimally sufficient supplies to litigate their lawsuits, the court of appeals has held that prisoners have "no constitutional entitlement to subsidy" in prosecuting their civil lawsuits. Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003); Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002); see also Johnson v. Daley, 339 F.3d 582, 586 (7th Cir. 2003) (prisoners have no constitutional right to have their adversaries or public treasury defray all or part of cost of civil litigation). These latter holdings appear to be at odds with Bounds and Gentry.

Regardless, I need not decide in the context of this motion how much prisons must do to assist prisoners in litigating civil lawsuits. Wisconsin Administrative Code § DOC 309.51 provides:

> Correspondence to courts, attorneys, parties in litigation, the inmate complaint review system under ch. DOC 310 or the parole board may not be denied due to lack of funds, except as limited in this subsection. Inmates without sufficient funds in their general account to pay for paper, photocopy work, or postage may receive a loan from the institution where they reside. No inmate may receive more than $200 annually under this subsection, except that any amount of the debt the inmate repays during the year may be advanced to the inmate again without counting against the $200 loan limit.

Plaintiff was denied a legal loan not because he had exceeded his loan limit but because prison officials determined that he did not qualify as indigent as a result of the income he received from his grievance settlement. Although plaintiff has spent that money and has

none left, prison officials have refused to reconsider his indigence for six months. (In doing so, the prison appears to have adopted a standard similar to the one employed by federal courts charged with assessing initial partial payments of filing fees for prisoners who lack the means to pay a full filing at once. Cf. 28 U.S.C. 1915(b)(1)(B).) I see no error in their decision to do so.

If plaintiff believes that prison officials are violating their own policy by refusing to reevaluate his indigency status, he has two means of recourse. He may file a petition for a writ of certiorari in Wisconsin state court, seeking a state court to order the prison to comply with its own rules, see, e.g., State ex rel. L'Minggio v. Gamble, 2003 WI 82, 23, 263 Wis. 2d 55, 667 N.W.2d, or if plaintiff believes that prison officials are retaliating against him for filing an inmate grievance that was recognized as meritorious, he may file a separate lawsuit raising an retaliation claim. However, insofar as plaintiff contends that prison officials are depriving him of access to the courts in this lawsuit, he has failed to show that prison officials' failure to give him a legal loan is preventing him from litigating his case. After all, he has managed to continue filing motions and has not missed any deadlines in this case. There is the risk, of course, that at some future point in this lawsuit plaintiff will be harmed. For now, however, his access to courts claim is not ripe. The motion will be denied.

II. MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff has moved for appointment of counsel, contending that requests that the combination of his limited legal funds and need for expert testimony justify the appointment of counsel. Plaintiff asserts that he needs counsel "to uncover all of the relevant medical/scientific reports/studies which show the physical and psychological harms [he] face[s] from being subject to . . . lack of sunlight and having to wear biohazard clothing" and "to have [himself] and probably others tested to uncover how [they've] been harmed from exposure to the conditions" in the Wisconsin Secure Program Facility. Although I appreciate the challenges petitioner faces in litigating his claims without the resources to obtain experts to testify on his behalf, I have no reason to believe appointing counsel would alleviate the obstacles he faces.

Petitioner has raised a novel legal claim, contending that the physical effects of sunlight deprivation are severe enough to constitute "cruel and unusual punishment" under the Eighth Amendment. Given the lack of readily-available and well-recognized sources on the subject, any litigant, represented or not, would have difficulty finding and funding the expert testimony needed to succeed on such a claim. This case would be costly to litigate and is unlikely to succeed. That fact may explain why none of the more than ten lawyers and public interest groups plaintiff has contacted were willing to accept his lawsuit. Given the difficulty this court has finding counsel willing to represent litigants at no cost in cases

far less complicated than this one, I have no reason to believe a lawyer would accept his case, much less be able to prosecute it with the resources plaintiff envisions.

Although the court of appeals has not answered the question "when, if ever, a district judge must recruit counsel in a case that is surely too complex for a given pro se litigant, but also too weak to attract representation on contingent fee from even a well-informed bar," Pruitt v. Mote, 472 F.3d 484, 489 (7th Cir. 2006), the court has counseled judges to consider the likelihood of plaintiff's success on the merits of his claim when determining whether to recruit counsel for him. Greeno v. Daley, 414 F.3d 645, 658 (7th Cir. 2005). I have serious reason to doubt that plaintiff can succeed in meeting his burden of proof on his Eighth Amendment claims (the only ones that are arguably too difficult for plaintiff to litigate himself).

Furthermore, every other consideration this court must make counsels against appointing a lawyer. As I have stated on previous occasions, plaintiff is a veteran litigant in federal court proceedings. He has been a plaintiff in at least ten civil cases filed in this court and in two cases filed in the Eastern District of Wisconsin. In his past lawsuits, plaintiff has raised multiple constitutional claims not only on his own behalf, but on behalf of other inmates. He is familiar with the law relating to prison litigation, as well as the technical aspects of prosecuting a lawsuit, such as conducting discovery, collecting admissible evidence, and following summary judgment procedures. Having witnessed plaintiff in court during the

trials of three of his cases, I have found him to be of ordinary intelligence, purposeful and capable of presenting his case to a jury. He possesses the intellectual and technical skills necessary to represent himself in this lawsuit. Although plaintiff faces serious challenges in litigating this suit, I do not believe appointing counsel would make a difference to the outcome. Consequently, I will deny plaintiff's motion for appointment of counsel.

III. REQUEST FOR PHOTOCOPIED RESEARCH MATERIALS

Finally, plaintiff has written to the court, inquiring whether he might purchase copies of articles from medical journals cited in the court's November 13, 2006 screening order. This court lacks the resources to locate, photocopy and mail resource materials to litigants. The proper channel for plaintiff's request is the prison library, which may obtain magazines such as those cited in the November 13 order through interlibrary loan requests.

ORDER

IT IS ORDERED that plaintiff Nathaniel Lindell's

1. Motion for appointment of counsel is DENIED.

2. "Motion for Court to Order Defendants to Provide Plaintiff Legal Loan" is DENIED.

3. Request for court-provided copies of articles cited in the court's November 13,

2006 order is DENIED.

Entered this 14th day of March, 2007.

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