

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

RODNEY JAMES REDMOND,

Plaintiff,

v.

LIEUTENANT DAVISON,

Defendant.

ORDER

09-cv-269-slc¹

In this prisoner civil rights case, plaintiff Rodney James Redmond contends that defendant Lieutenant Davison violated his right to be free from cruel and unusual punishment by disciplining him with a one-month loss of out-of-cell exercise time. He has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1).

Because plaintiff is a prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail

¹ While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. Having reviewed plaintiff's complaint, I conclude that it must be dismissed for plaintiff's failure to state a claim upon which relief may be granted.

Prisoners have the right under the Eighth Amendment to the minimal civilized measure of life's necessities, which include food, water, shelter, clothing and sanitary conditions of confinement. Townsend v. Fuchs, 522 F.3d 765, 774 (7th Cir. 2008); Vinning-El v. Long, 482 F.3d 923, 924 (7th Cir. 2007); Gillis v. Litscher, 468 F.3d 488, 493 (7th Cir. 2006). A lack of exercise may contribute to an Eighth Amendment violation when the deprivation is so extreme that "the health of the individual is threatened." French v. Owens, 777 F.2d 1250, 1255 (7th Cir.1985).

Unfortunately for plaintiff, the Court of Appeals for the Seventh Circuit has held on multiple occasions that "short-term denials of exercise" do not violate the Constitution. Thomas v. Ramos, 130 F.3d 754, 764 (7th Cir. 1997) (denial of outdoor exercise for 70 days permissible); Harris v. Fleming, 839 F.2d 1232, 1236 (7th Cir. 1988) (denial of out-of-cell exercise for 28 days permissible); Caldwell v. Miller, 790 F.2d 589, 601 (7th Cir. 1986) (Eighth Amendment not violated when inmate was denied all outside and indoor exercise privileges for month). The rationale for these cases is that the prisoner may "exercise in his cell for that short period of time." Thomas, 130 F.3d at 763. Because

plaintiff alleges that he was denied out-of-cell exercise for only one month, he cannot state a claim upon which relief may be granted under the Eighth Amendment.

ORDER

IT IS ORDERED that

1. This case is DISMISSED for plaintiff Rodney James Redmond's failure to state a claim upon which relief may be granted.

2. A strike will be recorded under 28 U.S.C. § 1915(g).

3. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

4. The clerk of court is directed to enter judgment in favor of defendants and close

this case.

Entered this 30th day of July, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge