

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

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TIMOTHY FRANCIS RIPP,

Plaintiff,

OPINION and ORDER

v.

10-cv-492-bbc

JANET NICKEL, MARC CLEMENTS,  
GREGORY GRAMS, AL MORRIS,  
ANTHONY ASHWORTH and WILLIAM POLLARD,

Defendants.

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Pro se plaintiff Timothy Francis Ripp, a Wisconsin prisoner, received a conduct report on July 30, 2008 for making a threat to a correctional officer. According to that report, after a disagreement with the officer, plaintiff “scream[ed]” at the officer in the presence of other prisoners, “You will be sorry because you’ll go to court. You better watch yourself because you’ll lose everything. You’ll lose your job. You better watch yourself.” (The conduct report includes other allegations and charges as well, but they are not the subject of this lawsuit.) After plaintiff received 120 days in disciplinary segregation as discipline for his conduct, he filed this lawsuit under 42 U.S.C. § 1983, contending that certain prison officials involved in the disciplinary decision violated his right to free speech

under the First Amendment. Defendants have filed a motion for summary judgment, dkt. #16, which is ready for decision.

Plaintiff does not deny that he made the statements identified in the conduct report, that he screamed at the officer or that he made the statements in front of other prisoners. Thus, the only question is a legal one: whether plaintiff's speech is protected under the First Amendment.

If plaintiff done nothing more than inform the officer that he believed she had violated his rights and he was going to file a lawsuit against her, plaintiff's claim would be a strong one. However, plaintiff used more provocative language than that, telling the officer that she "better watch [her]self" and that she would "lose everything" and "lose [her] job." Although plaintiff says that he was referring only to the consequences of a lawsuit, defendants say that they interpreted his statements as a more sinister threat, particularly because of the tone of voice he used and the public nature of his statements.

Unfortunately for plaintiff, the law is not on his side. In Watkins v. Kasper, 599 F.3d 791 (7th Cir. 2010), the court concluded that similar statements made in the prison context are not protected. In particular, the court held that the First Amendment did not protect a prisoner's "loud and boisterous" oral complaints to a prison official in front of other prisoners because the statements "impeded [the official's] authority and . . . ability to implement [prison] policy." Id. at 797. Although the court acknowledged that the prisoner

had “a general First Amendment right to criticize [prison] policies,” it stated that “he must do so ‘in a manner consistent with his status as a prisoner.’ Instead of openly criticizing [the official’s] directives during a meeting with other [prisoners], [the plaintiff] could have taken the less disruptive approach of filing a written complaint.” Id. (quoting Freeman v. Texas Dept. of Criminal Justice, 369 F.3d 854, 864 (5th Cir. 2004)).

If simply criticizing a prison official loudly in front of other prisoners is not protected speech, then plaintiff’s statement to an officer that she “better watch [her]self” is not either. I cannot say that defendants were unreasonable in concluding that plaintiff’s comments were threatening. Van den Bosch v. Raemisch, 658 F.3d 778, 787 (7th Cir. 2011) (“The essential question is not whether the threats were eventually carried out, but whether plaintiff has shown that it was not reasonable for defendants to perceive the [speech] as a potential threat to rehabilitation and security.”); May v. Libby, 256 Fed. Appx. 825, 828 (7th Cir. 2007) (letter asking how to pursue federal and criminal charges against prison officials not protected speech in prison context because it was reasonable to perceive letter as “veiled threat”), cited with approval in Van den Bosch, 658 F.3d at 785, 788. Like the prisoner in Watkins, plaintiff had other options. For example, he could have stated his intention to file a lawsuit without screaming or using provocative language.

Defendants discuss another conduct report in their motion involving another charge against plaintiff for making a threat, but it is not clear whether plaintiff intended to

challenge that report in this case. Although he mentioned it in his complaint, he did not sue the officials involved in issuing or reviewing that report and he does not discuss the report in his opposition brief. In any event, it is undisputed that plaintiff was found not guilty of making a threat in that case, so he was not sufficiently harmed to sustain a claim. Bridges v. Gilbert, 557 F.3d 541, 555 (7th Cir. 2009) (“A single retaliatory disciplinary charge that is later dismissed is insufficient to serve as the basis of a § 1983 action.”).

#### ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Janet Nickel, Marc Clements, Al Morris and Anthony Ashworth, dkt. #16, is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 22d day of June, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge