

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

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LEE KNOWLIN,

Plaintiff,

OPINION and ORDER

v.

10-cv-829-bbc

CHRISTA MORRISON,  
KIMBERLY MARKS, LARRY STICH  
and RON BREWER,

Defendants.

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Pro se plaintiff Lee Knowlin is a prisoner in the custody of the Wisconsin Department of Corrections. He has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that prison officials violated his constitutional rights by refusing to lower his custody status because of an administrative appeal he filed. 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 must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915A. Having reviewed the complaint, I conclude that he has stated a claim upon which relief may be granted against

each defendant.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff fairly alleges the following facts.

### ALLEGATIONS OF FACT

In January 2010, plaintiff Lee Knowlin was incarcerated at the Prairie du Chien Correctional Institution. He was scheduled to have a hearing before the program review committee in October 2010, but the Earn Release Review Commission recommended to the committee that plaintiff receive an early hearing and be placed in “community custody.”

Plaintiff asked defendant Christa Morrison, the chairperson of the program review committee, to grant him an early hearing to determine whether he should be transferred to community custody. Morrison denied the request in January 2010. In March 2010, plaintiff filed an appeal with the corrections service manager in which he accused Morrison of attempting to persuade the commission to withdraw its recommendation.

Plaintiff received a hearing on May 26, 2010 before the program review committee, including defendants Larry Stich, Ron Brewer and Morrison. (Plaintiff does not say whether he received the hearing as a result of his appeal or for another reason.) Morrison accused plaintiff of “trying to intimidate” her and the other committee members by appealing her

previous decision. The committee denied plaintiff's request to be transferred to community custody. Defendant Kimberly Marks, an offender classification specialist, affirmed the committee's decision, relying on the same reasoning that plaintiff was attempting to intimidate the committee.

### OPINION

Prison officials may not retaliate against a prisoner for exercising a constitutional right. Pearson v. Welborn, 471 F.3d 732, 738 (7th Cir. 2006). Plaintiff has the right to complain about prison conditions under the free speech clause, Pearson, 471 F.3d at 740-41, and to file grievances under the petition clause, Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007). However, officials may punish a prisoner's expressive activities if doing so is reasonably related to a legitimate penological interest. Turner v. Safley, 482 U.S. 78 (1987). In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain to the prisoner; what impact accommodation of the right will have on prison administration; and whether there are other ways that prison officials can achieve the same goals without encroaching on the right. Id. at 89.

In this case, plaintiff alleges that each of the defendants refused to reduce his custody

level because of an administrative appeal he filed. That is sufficient to state a claim upon which relief may be granted. Thomson v. Washington, 362 F.3d 969, 970-71 (7th Cir. 2004) (plaintiff may state claim for retaliation by identifying the protected conduct and the alleged acts of retaliation).

To prevail on this claim at summary judgment or trial, plaintiff will have to show that each of the defendants had an unconstitutional motive in voting to deny his request for a change in custody. Further, if the evidence shows that defendants objected to particular language that plaintiff used in his appeal, the question will be whether the language is protected under the standard articulated in Turner.

## ORDER

IT IS ORDERED that

1. Plaintiff Lee Knowlin is GRANTED leave to proceed on his claim that defendants Christa Morrison, Kimberly Marks, Larry Stich and Ron Brewer refused to transfer plaintiff to community custody because plaintiff exercised his constitutional right to file an administrative appeal.

2. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The

court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee 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 fee has been paid in full.

Entered this 31st day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge