

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

CHRISTOPHER M. SANDERS,
Plaintiff,

v.

WARDEN WALLACE, CAPTAIN CHADA
and MS. LUNDMARK,

Defendants.

ORDER

11-cv-206-slc¹

In this proposed civil action for monetary and injunctive relief, plaintiff Christopher Sanders contends that defendants Warden Wallace, Captain Chada and Ms. Lundmark violated his constitutional rights while he was incarcerated at the Chippewa Valley Correctional Treatment Facility. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment of his filing fee.

Because plaintiff was a prisoner when he filed his complaint, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. 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).

After reviewing the complaint, I conclude that plaintiff may proceed on his claim that defendant Lundmark violated his rights under the First Amendment by threatening him with a conduct report and issuing two false conduct reports against him in retaliation for his grievances about the inmate complaint system and Lundmark's treatment of him. However, plaintiff has failed to state claims against defendants Chada or Wallace. Therefore, they will be dismissed from the case.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

On November 3, 2010, plaintiff was transferred from the Stanley Correctional Institution to the Chippewa Valley Correctional Treatment Facility. At the time he was transferred, plaintiff had several inmate grievances that he wished to submit regarding incidents that occurred at the Stanley Correctional Institution. Madison's corrections complaint examiner told plaintiff to submit the grievances to the complaint examiner at the Chippewa Valley prison. Plaintiff submitted several grievances, but defendant Lundmark from the inmate complaint examiners' office rejected or dismissed all of them.

On December 11, 2010, plaintiff asked two officers for grievance appeal forms. One officer told plaintiff to speak with a sergeant on the second floor. The sergeant could not find any appeal forms on any of the three prison floors, so he printed out appeal forms for plaintiff. Later that night, plaintiff wrote a request to the inmate complaint office, stating that none of the floors had appeal forms. He also stated that he needed eight forms for his appeals.

On December 13, 2010, defendant Lundmark wrote to plaintiff, stating that he could receive a “ticket” for “going to other floors taking inventory” and stated that plaintiff should “ask an officer appropriately” for appeal forms. On December 14, 2010, plaintiff wrote to Lundmark, stating that he had permission to leave his floor and that he “realize[ed] that [Lundmark was] trying to scare [plaintiff] from using the complaint system.” He told her to “please stop hindering [him] from getting help with the abusive staff at” the Stanley Correctional Institution.

On December 15, 2010, defendant Lundmark wrote plaintiff tickets for “disrespecting staff” and “lying to staff.” The tickets alleged that there were appeal forms available and that plaintiff had not been authorized to leave his floor. After plaintiff received the tickets, he asked defendant Captain Chada whether he could have a copy of the December 14 request form he had sent to defendant Lundmark. Chada refused to give plaintiff a copy of the request form, telling plaintiff he had to get that himself.

On December 23, 2010, defendant Chada presided over a hearing regarding the two tickets and plaintiff presented evidence to support his innocence. At the hearing, Chada told plaintiff to stop talking about the federal courts because Chada did not care about them. Chada lied on the hearing report, saying that plaintiff had presented no evidence to prove his innocence. He also misquoted plaintiff on the hearing report. Ultimately, plaintiff received a “reprimand” for the two tickets.

Plaintiff sought to challenge or appeal Chada’s decision from the disciplinary hearing but could not figure out how to do so. Eventually, he filed a grievance against defendant Lundmark for retaliation and violations of his rights to due process and equal protection under the law. He requested that defendant Lundmark not handle the grievance because of a conflict of interest, but Lundmark rejected the grievance immediately. Plaintiff appealed to defendant Warden Wallace for help, stating that Lundmark should not have handled the retaliation and equal protection grievance and that Lundmark’s rejection “did not make sense.” Wallace affirmed dismissal of the grievance.

DISCUSSION

A. Defendant Lundmark

Plaintiff contends that defendant Lundmark violated his First and Fourteenth Amendment rights by (1) hindering his ability to get help with his inmate complaints; (2)

threatening him with a conduct report in retaliation for his filing a complaint regarding the lack of appeal forms; (3) issuing two false conduct reports against him in retaliation for his telling her to stop hindering his ability to file conduct reports; (4) refusing to recuse herself from consideration of his grievance in which he complained about her actions; and (5) rejecting the grievance he filed against her.

As an initial matter, plaintiff cannot state a claim against defendant Lundmark for violation of his right to procedural due process under the Fourteenth Amendment for issues related to the inmate grievance procedures because “a state’s inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause.” Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996); see also Owens v. Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) (prison grievance procedures “do not by their very existence create interests protected by the Due Process Clause”); Grieverson v. Anderson, 538 F.3d 763, 772-73 (7th Cir. 2008) (constitution does not require state to employ any grievance procedure whatsoever). Additionally, plaintiff’s allegations that defendant Lundmark hindered his ability to file inmate complaints and failed to recuse herself from considering a complaint do not state claims under the First Amendment because such claims assume that plaintiff had a right to a particular grievance procedure. However, the First Amendment does not require that the prison provide a grievance procedure or even require prison officials to respond to grievances. Owens, 635 F.3d at 953; Hilton v. City of Wheeling, 209 F.3d 1005, 1006-07

(7th Cir. 2000).

The First Amendment does protect prisoners from punishment or retaliation for filing grievances. *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005). Thus, a prisoner's decision to file a grievance can form the basis for a First Amendment retaliation claim. To state a claim for retaliation, plaintiff must (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by defendant that would likely deter a person from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was a motivating factor in defendant's decision to take retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009) (citing *Woodruff v. Mason*, 542 F.3d 545, 551 (7th Cir. 2008)).

Plaintiff alleges that he was engaged in the constitutionally protected activity of filing inmate grievances and that defendant Lundmark retaliated against him by threatening him with a conduct report, filing two false conduct reports against him and rejecting the grievance he filed against her. Plaintiff's allegations permit an inference that his grievances about the inmate complaint system and Lundmark's treatment of him were a motivating factor in her decision to threaten plaintiff with a conduct report and to issue two false conduct reports against him. Additionally, it is plausible to infer that a person of ordinary firmness would be deterred from filing grievances in the future if it meant that he would receive conduct

reports and notations of misbehavior on his prison record. Therefore, plaintiff may proceed with his claim that Lundmark retaliated against him by threatening him and filing false conduct reports against him.

However, plaintiff cannot state a claim for retaliation based on Lundmark's rejection of the grievance in which he complained about her. Lundmark had no constitutional obligation to respond to plaintiff's complaint about her or to even read it. In addition, a complaint examiner's rejection of a grievance would not "deter a person of ordinary firmness" from filing a grievance in the future. Bridges, 557 F.3d at 552. Although a prisoner might believe that his complaint would be rejected unfairly by a future complaint examiner, the prisoner has not actually suffered harm as a result of the complaint examiner's actions; he still has the ability to appeal the rejection or raise the issue in court.

B. Defendant Captain Chada

Plaintiff contends that defendant Chada violated his rights to due process under the Fourteenth Amendment by conducting an unfair disciplinary hearing regarding plaintiff's conduct reports. In particular, plaintiff contends that Chada lied on the hearing report, laughed at plaintiff and told him that he did not care about the federal courts and found plaintiff guilty of misconduct even though it was clear that plaintiff was innocent.

The Fourteenth Amendment prohibits states from depriving “any person of life, liberty or property without due process of law.” U.S. Const. Amend. XIV. To state a procedural due process claim, a prisoner must allege facts suggesting that he was deprived of a “liberty interest” and that this deprivation took place without the procedural safeguards necessary to satisfy due process. *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). In the absence of a protected liberty or property interest, “the state is free to use any procedures it chooses, or no procedures at all.” *Montgomery v. Anderson*, 262 F.3d 641, 644 (7th Cir. 2001). Therefore, the first question in any due process analysis is whether a protected liberty or property interest has been infringed.

In the prison context, liberty interests are “generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 483-484. Here, plaintiff contends only that defendant Chada violated his due process rights by subjecting him to an unfair disciplinary proceeding that resulted in a “reprimand.” Nothing about his allegations suggests that he was subjected to an “atypical and significant hardship” that would give rise to a liberty interest under the Fourteenth Amendment and require specific process. Therefore, plaintiff cannot state a claim for violation of his Fourteenth Amendment rights against defendant Chada.

C. Defendant Warden Wallace

Plaintiff has named Warden Wallace as a defendant, but the only allegations related to Wallace concern Wallace's rejection of plaintiff's appeal regarding defendant Lundmark's refusal to recuse herself from considering plaintiff's complaint about her. Because Lundmark's refusal to recuse herself was not a constitutional violation, Wallace's failure to reverse Lundmark's rejection was not a constitutional violation. Therefore, plaintiff has failed to state a claim against Wallace for violation of his constitutional rights.

ORDER

IT IS ORDERED that

1. Plaintiff Christopher Sanders is GRANTED leave to proceed on his claim that defendant Ms. Lundmark violated his rights under the First Amendment by threatening him with a conduct report and issuing two false conduct reports against him in retaliation for his grievances complaining about the inmate complaint system and her treatment of him.

2. Plaintiff is DENIED leave to proceed on the following claims:

a. defendant Lundmark violated plaintiff's constitutional rights by hindering his ability to get help with his inmate complaints, refusing to recuse herself from consideration of his grievance in which he complained about her actions and rejecting the grievance he filed against her;

b. defendant Captain Chada violated his rights under the Fourteenth Amendment by holding an unfair disciplinary hearing; and

c. defendant Warden Wallace violated his constitutional rights by rejecting plaintiff's appeal concerning defendant Lundmark.

3. The complaint is DISMISSED as to defendants Chada and Wallace.

4. Under 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 state defendant. 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 on behalf of defendant Lundmark.

5. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies

of his documents.

Entered this 11th day of May, 2011.

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