

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

JEFFREY STEVEN AKRIGHT,

Plaintiff,

v.

RANDALL HEPP, STEVEN FOSTER
and MICHAEL ISENSEE,

Defendants.

OPINION and ORDER

11-cv-357-bbc

The parties have responded to the court's request for supplemental materials before ruling on pro se plaintiff Jeffrey Steven Akright's request for injunctive relief in this prisoner civil rights case. Because these materials show that plaintiff's request is now moot, am I dismissing the case.

Plaintiff's claim is that defendants Randall Hepp, Steven Foster and Michael Isensee violated his rights under the First Amendment by disciplining him for possessing affidavits of other prisoners that he was using to support his claims in other litigation. Plaintiff sought damages and two kinds of injunctive relief: (1) expungement of his disciplinary record; and (2) an order prohibiting defendants from disciplining him in the future for possessing other

prisoners' affidavits that he is using in his own litigation.

In their motion for summary judgment, defendants argued that they disciplined plaintiff only because they were not aware that plaintiff had collected the affidavits for his own cases. Rather, they believed that they were enforcing a rule that prohibited jailhouse lawyers from possessing another inmate's legal materials unless the two inmates lived in the same housing unit. Because defendants could not be held liable for making a mistake and plaintiff adduced no evidence contradicting defendants' professed ignorance, I granted defendants' motion for summary judgment as it related to damages. United States v. Norwood, 602 F.3d 830, 835 (7th Cir. 2010) (“[O]nly intentional conduct violates the Constitution.”).

However, the parties had not adequately addressed plaintiff's requests for injunctive relief. With respect to his request for expungement of his disciplinary record, defendants admitted that they had not corrected their records to show that plaintiff was not guilty of violating the prison rule regarding jailhouse lawyers, but they developed no argument that they were justified under the First Amendment in failing to take action. Accordingly, I instructed defendants to (1) submit supplemental materials showing that their continued discipline of plaintiff for possessing other prisoners' affidavits is justified under the First Amendment; or (2) inform the court that they had reconsidered the disciplinary decision without relying on plaintiff's possession of those affidavits.

With respect to plaintiff's request regarding future discipline, neither side had addressed the question whether that request was moot in light of defendants' position that they had no intention of disciplining plaintiff or any other prisoner for using other prisoners' affidavits to support their own litigation. I directed the parties to address the mootness question in their supplemental materials.

In defendants' response, defendant Hepp represents that he has reversed the finding of guilt as to plaintiff with respect to the violation of the rule regarding jailhouse lawyers and he has directed prison staff to "make any necessary changes to existing records to reflect this decision." Dkt. #49-1. In addition, he circulated a memorandum to his staff to make it clear that the rule "does not prohibit inmates from possessing affidavits or statements they have obtained from . . . other inmates for filing **in their own cases.**" Dkt. #49-2 (emphasis in original). As a result, defendants ask the court to dismiss the case as moot. Plaintiff has informed the court that he "will forgo filing a response brief." Dkt. #51.

I agree with defendants that the case is now moot. With respect to plaintiff's request to correct his disciplinary records, defendants have granted that request, so there is no other relief the court could order. Nelson v. Miller, 570 F.3d 868, 883-89 (7th Cir. 2009) (prisoner's claim was moot after warden provided requested relief). With respect to plaintiff's request regarding future discipline, I am persuaded that there is little chance that plaintiff will be disciplined again for possessing affidavits of other prisoners to support his

own litigation. Plaintiff has not shown that the conduct report he received was anything other than an isolated mistake and defendants have taken steps to caution their staff about applying the rule properly in the future. City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983) ("threat of injury must be both real and immediate, not conjectural or hypothetical") (internal quotations omitted).

ORDER

IT IS ORDERED that plaintiff Jeffrey Steven Akright's claim for injunctive relief is DISMISSED as moot. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 6th day of April, 2012.

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