

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

GESA S. KALAFI-FELTON,

Plaintiff,

v.

ORDER

11-cv-480-wmc

PETER HUIBREGTSE, GARY BROUGHTON,
MONICA HORNER, LYNDA SCHWANDT,
BRIAN KOOL, TRACY MARTIN, MARY TAYLOR,
JARED BARR, JOHN KUSSMAUL, MELANIE
HARPER, LEBBEUS BROWN, DAVID GARDNER,
and PHILLIP HENNEMAN,

Defendants.

In this case Plaintiff Gesa S. Kalafi-Felton is proceeding on his claim that defendants Kool, Harper, Gardner, Huibregtse, Taylor, Martin, Kussmaul, Barr, Henneman, Broughton, Brown, Horner and Schwandt removed him from the High Risk Offender Program and moved him to the Adjustment Center in retaliation for filing a complaint against defendant Broughton. The court will now determine whether Kalafi's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations to the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his September 5, 2011 proposed amended complaint, Kalafi alleges and the court assumes for purposes of this screening order the following facts:

A. Parties

Plaintiff Gesa S. Kalafi is an inmate at the Wisconsin Secure Program Facility located in Boscobel, Wisconsin (WSPF).

Defendant Peter Huibregtse was the previous warden and defendant Gary Broughton was a previous deputy warden. Defendants Monica Horner and Lynda Schwandt were previous security directors. Defendant Brian Kool is a unit manager at WSPF.

Defendants Lebbeus Brown and David Gardner are captains. Defendants John Kussmaul and Phillip Henneman are sergeants at WSPF. Defendants Mary Taylor, Tracy Martin, and, Jared Barr are correctional officers. Defendant Melanie Harper is a social worker.

B. Removal from High Risk Offender Program

WSPF has a program called the High Risk Offender Program (HROP). It is a voluntary program for adjustment center inmates. Once an inmate has completed the phases of the program he can return to general population. On June 20, 2008, plaintiff was placed on administrative confinement status. He began the HROP program On September 30, 2008.

On February 10, 2010, Kalafi wrote defendant Broughton complaining about the decision on his grievance. On February 11, 2010, Kalafi received a warning in his behavior log and was removed from the program by defendants Kool, Harper, Gardner, Huibregtse, Taylor, Martin, Kussmaul, Barr, Henneman and Broughton for filing a complaint against Broughton the day before. After plaintiff was removed from the program on February 11, 2010, defendants Kool, Huibregtse, Broughton, Brown Harper, Horner, Schwandt, Taylor and Martin moved him from the AC unit Echo to Fox Trot, a program disciplinary segregation unit.

OPINION

Kalafi contends that defendants Kool, Harper, Gardner, Huibregtse, Taylor, Martin, Kussmaul, Barr, Henneman, Broughton, Brown, Horner and Schwandt retaliated against him for filing a grievance against defendant Broughton when they removed him from the High Risk Offender Program and moved him to the adjustment center.

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 a constitutional right of access to the courts, which includes the right to file nonfrivolous lawsuits. *Lehn v. Holmes*, 364 F.3d 862, 868 (7th Cir. 2004). He also has the right to complain about prison conditions under the free speech clause, *Bridges v. Gilbert*, 557 F.3d 541, 551 (7th Cir. 2009), and to file grievances under the petition clause. *Powers v. Snyder*, 484 F.3d 929, 932 (7th Cir. 2007).

To state a claim for retaliation, a plaintiff must identify: (1) his protected conduct (in this case, the grievance he filed), (2) the act of retaliation (the removal from the High Risk Offender Program and placement in the adjustment center) and (3) the defendants involved (Kool, Harper, Gardner, Huibregtse, Taylor, Martin, Kussmaul, Barr, Henneman, Broughton, Brown, Horner and Schwandt). *Higgs v. Carver*, 286 F.3d 437, 439 (7th Cir. 2002). Because plaintiff has done this, I will allow him to proceed on this claim.

In going forward with his retaliation claims, plaintiff should know that he has a difficult road ahead of him. A claim for retaliation presents a classic example of a claim that is easy to allege but hard to prove. Many prisoners make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff

may not prove his claim with the allegations in his complaint, *Sparing v. Village of Olympia Fields*, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). At summary judgment or trial plaintiff will have to come forward with evidence showing a causal connection between the grievance he filed and the adverse treatment he received.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Gesa S. Kalafi's request to proceed on his claim that Kool, Harper, Gardner, Huibregtse, Taylor, Martin, Kussmaul, Barr, Henneman, Broughton, Brown, Horner and Schwandt retaliated against him is GRANTED.
- (2) For the time being, plaintiff must send defendant a copy of every paper or document 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.
- (3) 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.
- (4) Plaintiff is obligated to pay the filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- (5) 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 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 for defendant.

Entered this 31st day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge