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

CHARLES WILLIAM HOOPER,

Plaintiff,

v.

KRISTINE HAMMERMEISTER,

Defendant.

OPINION AND ORDER

11-cv-572-slc

Plaintiff Charles William Hooper brings this proposed civil action against Kristine Hammermeister, a deputy at the Sauk County Jail. Plaintiff is proceeding pro se and has been allowed to proceed without prepayment of costs and fees in this action, but the next step is determining whether plaintiff'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. § 1915(e)(2)(B). 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 complaint, plaintiff alleges the following facts:

ALLEGATIONS OF FACT

On July 23, 2011, while plaintiff was confined in the Sauk County Jail, defendant Deputy Kristine Hammermeister approached his cell and told him to get up and help clean. Plaintiff responded that it was his Sabbath day and, due to his religion, he had to clean on another day if possible. Defendant stated that he had to go to segregation because everyone cleans on their day. She said she didn't care if plaintiff was a Muslim or not because he did not let her know when he was processed into the jail what his religion was. Plaintiff was handcuffed and placed in segregation.

OPINION

I understand plaintiff to be alleging that defendant Hammermeister violated his right to practice the religion of his choice by placing him in segregation for refusing to work on his "Sabbath day."[1] These allegations raise a claim under the First Amendment free exercise clause as well as a First Amendment retaliation claim.[2] Such allegations might also raise a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1 et seq., but plaintiff is no longer at the jail and does not bring a claim for injunctive relief. Accordingly there is no need to discuss a RLUIPA claim. *Nelson v. Miller*, 570 F.3d 868, 889 (7th Cir. 2009) (RLUIPA claims may be brought for injunctive relief against a government agency or individuals acting in official capacity, but not for monetary damages.)

Regarding his free exercise claim, plaintiff must show a "substantial burden" on a central religious belief or practice. *Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir. 2005). A "substantial burden" is "one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). Moreover, once a plaintiff shows that a prison restriction imposes a substantial burden on his central belief or practice, the restriction is valid if it is reasonably related to a legitimate penological interest. *See Turner v. Safley*, 482 U.S. 78, 89 (1987). Courts consider four factors in determining

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[1] It is unclear what religion plaintiff practices (it appears that defendant thought that plaintiff practices Islam) but at this early stage it is enough that he alleges that his religion has a Sabbath day.

[2] Plaintiff does not identify either legal theory in his complaint, bu the is not required to do so. *Hatmaker v. Memorial Medical Center*, 619 F.3d 741, 743 (7th Cir. 2010) ("[P]laintiffs in federal courts are not required to plead legal theories. Even citing the wrong statute needn't be a fatal mistake.").

whether the challenged restriction is constitutional: (1) whether the restriction "is rationally related to a legitimate and neutral governmental objective"; (2) "whether there are alternative means of exercising the right that remain open to the inmate"; (3) "what impact an accommodation of the asserted right will have on guards and other inmates"; and (4) "whether there are obvious alternatives to the [restriction] that show that it is an exaggerated response to [penological] concerns." *Lindell v. Frank*, 377 F.3d 655, 657 (7th Cir. 2004) (citing *Turner*, 482 U.S. at 89-91).

Plaintiff's allegations, construed generously at this point in the proceedings, are sufficient to state a free exercise claim. At summary judgment or trial, however, plaintiff will have to provide significantly more detail about his claim, such as explaining what religion he practices, how important rest on the Sabbath day is to his practice and how defendant's actions burdened his practice.

As for plaintiff's retaliation claim, prisoners have the right to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty. *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972); *Hunafa v. Murphy*, 907 F.2d 46, 47 (7th Cir. 1990). Furthermore, "an act in retaliation for the exercise of a constitutionally protected right is actionable under Section 1983 even if the act, when taken for different reasons, would have been proper." *Howland v. Kilquist*, 833 F.2d 639, 644 (7th Cir. 1987); *see also Bridges v. Gilbert*, 557 F.3d 541, 552 (7th Cir. 2009). To establish a First Amendment retaliation claim, a plaintiff must show that: "(1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) [his] First Amendment activity was 'at least a motivating factor' in the [d]efendant's decision

to take the retaliatory action." *Bridges*, 557 F.3d at 546. As with the free exercise claim, plaintiff's allegations are sufficient to pass the screening stage.

ORDER

It is ORDERED that:

(1) Plaintiff Charles Hooper's request to proceed is GRANTED on his First Amendment free exercise and retaliation claims against defendant Kristine Hammermeister.

(2) For the remainder of this lawsuit, 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 remainder of the $350 filing fee for this action when he has the means to do so.

(5) Copies of plaintiff's complaint and this order are being forwarded to the United States Marshal for service on defendant.

Entered this 18th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge