

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

ALMONDO BAKER,

Plaintiff,

OPINION AND ORDER

v.

11-cv-852-wmc

SGT. SCHMIDT and
SGT. MACKEY,

Defendant.

Plaintiff Almondo Baker is a prisoner at the Oakhill Correctional Institution in Oregon, Wisconsin. He seeks leave to proceed *in forma pauperis* on a proposed complaint brought pursuant to 42 U.S.C. § 1983. Having paid his initial partial filing fee, the next step is determining whether Baker'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).

In his complaint, Baker alleges that prison staff at La Crosse County Jail, his previous institution, violated his rights under the due process clause of the Fourteenth Amendment by placing him in administrative segregation for two months for no reason. After examining his complaint, the court determines that it must be dismissed for failure to state a claim upon which relief may be granted.

ALLEGATIONS OF FACT¹

At all times relevant to the complaint, Baker was a prisoner at La Crosse County

¹ For purposes of screening, the court assumes all of the following facts are true.

Jail in La Crosse, Wisconsin. Defendants Sgt. Schmidt and Sgt. Mackey are employees of the La Crosse County Sheriff's Department assigned to the jail division.

On May 29, 2010, plaintiff was admitted to La Crosse County Jail. Shortly after his admission, plaintiff was placed in administrative confinement without cause. He did not pose a risk of harm to himself, others or other's property. He posed no threat to the security or order of the jail, nor would his placement in the general population have inhibited a disciplinary investigation. He remained in disciplinary segregation until sometime in July 2010. While he was in segregation, the isolation caused him to experience emotional distress and to vomit repeatedly.

OPINION

Plaintiff alleges that defendants violated his right to due process under the Fourteenth Amendment by placing him in administrative segregation for no reason. 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 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).

Unfortunately for plaintiff, his complaint does not satisfy either element. First, plaintiff alleges that there was no reason to place him in administrative segregation, but does not allege that the prison failed to follow adequate procedural safeguards. In particular, plaintiff does not allege that the prison failed to review his placement or did

not permit him to challenge his placement. *See Westefer v. Neal*, 682 F.3d 679, 686 (7th Cir. 2012).

Second, and more important for screening purposes, plaintiff's allegations are insufficient to infer that he had a liberty interest in avoiding placement in administrative segregation. In *Sandin*, the Supreme Court determined that inmates have a liberty interest in avoiding more restrictive conditions, such as segregation, but only if they pose "an atypical and significant hardship." 515 U.S. at 484. Since *Sandin*, the Court of Appeals for the Seventh Circuit has held repeatedly that "inmates have no liberty interest in avoiding transfer to discretionary segregation – that is, segregation imposed for administrative, protective, or investigative purposes," *Townsend v. Fuchs*, 522 F.3d 765, 771 (7th Cir. 2008) (citations omitted) – at least as long as the length of segregation is "relatively short." *Marion v. Columbia Correction Inst.*, 559 F.3d 693, 697 (7th Cir. 2009).

"A liberty interest may arise if the length of the confinement is substantial and the record reveals the conditions of confinement are unusually harsh," but the court has upheld stays in segregation up to 90 days without inquiry into the actual conditions of confinement. *Id.* at 697 n.2. Because plaintiff alleges that he spent at most two months in segregation, plaintiff cannot state a liberty interest and his due process claim must be dismissed with prejudice.

In an effort to establish a liberty interest, plaintiff places substantial emphasis on Department of Corrections regulations stating that

An inmate may be placed in administrative confinement only if the inmate's continued presence in the general population:

(a) Presents a substantial risk of physical harm to the inmate,

another person or property;

(b) Threatens the security and order of the jail; or

(c) Inhibits a pending disciplinary investigation.

Wis. Admin. Code DOC § 350.13.

State law can create a liberty interest protected by the due process clause. *Sandin*, 515 U.S. at 483-84. Before 1995, whether state prisoner regulations created a protected interest depended on whether the regulations contained mandatory language. *Hewitt v. Helms*, 459 U.S. 460, 471-472 (1983). In *Sandin*, however, the Supreme Court overruled *Hewitt*, holding instead that whether a liberty interest exists depends on the nature of the restraint and that, while States may create liberty interests subject to constitutional protection, those “interests are generally limited to freedom from restraint which . . . nonetheless imposes an atypical and significant hardship.” *Sandin*, 515 U.S. at 483-84. Since the Department of Corrections’ regulations governing administrative segregation at issue here do not impose atypical restraints, they do not create a protected liberty interest.

ORDER

IT IS ORDERED that plaintiff

1. Plaintiff Almondo Baker is DENIED leave to proceed on his claim that defendants Sgt. Schmidt and Sgt. Mackey violated his right to due process under the Fourteenth Amendment.
2. A strike will be recorded against plaintiff in accordance with 28 U.S.C. §1915(g).

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 14th day of May, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge