

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

JEFFREY STEVEN AKRIGHT,

Plaintiff,

v.

KELLY BOCHAT and PENNY VOIGHT,

Defendants.

OPINION AND ORDER

12-cv-733-bbc

Pro se plaintiff Jeffrey Steven Akright has filed a proposed complaint under 42 U.S.C. § 1983. Plaintiff alleges that he is a former prisoner who is now on extended supervision, that defendant Kelly Bochat is a Wisconsin probation officer who searched his home and confiscated various letters, photographs and a legal procedure book and that he complained to Bochat's supervisor, defendant Penny Voight, but she has refused to do anything about it. Plaintiff is asserting a claim under the free speech clause of the First Amendment and he seeks declaratory, injunctive and monetary relief.

Because plaintiff is proceeding under 28 U.S.C. § 1915 without prepayment of fees, I must screen the complaint to determine whether it states a claim upon which relief may be granted. Having reviewed plaintiff's allegations, I conclude that he may proceed on a claim under the First Amendment against both defendants.

The Court of Appeals for the Seventh Circuit has held or assumed that each of the

items allegedly confiscated are protected by the First Amendment, even in the correctional setting. Munson v. Gaetz, 673 F.3d 630, 633 (7th Cir. 2012) (books); Jackson v. Frank, 509 F.3d 389, 392 (7th Cir. 2007) (photographs); Gaines v. Lane, 790 F.2d 1299, 1304 (7th Cir. 1986) (letters). In cases brought by prisoners, the standard of review is whether the defendants' actions are reasonably related to a legitimate penological interest. Turner v. Safley, 482 U.S. 78 (1987). There are few cases involving First Amendment restrictions on parolees or persons on extended supervision, but the standard seems to be similar to the one in Turner. United States v. Schave, 186 F.3d 839, 843 (7th Cir. 1999) (“[A] court will not strike down conditions of release, even if they implicate fundamental rights, if such conditions are reasonably related to the ends of rehabilitation and protection of the public from recidivism.”); Morales v. Schmidt, 489 F.2d 1335, 1343 (7th Cir. 1973) (restriction on First Amendment rights on parolee constitutional if it “bears a rational relationship to or is reasonably necessary for the advancement of a justifiable purpose of the State”).

In any event, it is unnecessary to decide the appropriate standard of review at this stage because plaintiff does not identify any justification that defendants may have had for taking his letters, photographs and book. At summary judgment, the parties may debate what the standard should be and whether defendants' conduct satisfies that standard.

Although plaintiff does not allege that defendant Voight was involved in physically removing his property, I will allow him to proceed against Voight because he says that she is Bochat's supervisor and failed to take any action when he complained to her. A supervisor may be held liable under § 1983 if she knows about wrongful conduct and facilitates it,

approves it, condones it or turns a blind eye for fear of what she might see. Backes v. Village of Peoria Heights, Illinois, 662 F.3d 866, 869-70 (7th Cir. 2011). At this stage, it is reasonable to infer that Voight received plaintiff's complaint and had the authority to return his property, but took no action because she believed the taking was appropriate. However, plaintiff will have to prove each of these facts at summary judgment or trial.

ORDER

IT IS ORDERED that

1. Plaintiff Jeffrey Steven Akright is GRANTED leave to proceed on his claim that defendants Kelly Bochat and Penny Voight confiscated his letters, photographs and legal procedure book, in violation of the First Amendment.

2. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

4. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a

letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

5. A copy of the complaint, this order, summons for defendants and United States Marshal service forms will be forwarded to the United States Marshal for service on defendants. Plaintiff should not attempt to serve defendants on his own.

Entered this 10th day of January, 2013.

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