

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

TERRANCE PRUDE,

Plaintiff,

v.

WILLIAM POLLARD, LIEUTENANT LARSEN,
TONI MELI, CAPTAIN RADTKE,
LIEUTENANT SABISH, TONI MOON
and INSTITUTION COMPLAINT
EXAMINER MUENCHOW,

Defendants.¹

OPINION AND ORDER

13-cv-512-bbc

Pro se plaintiff Terrance Prude has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that various prison officials retaliated against him for filing a grievance in which he accused a correctional officer of filing false conduct reports against prisoners. Plaintiff has made an initial partial payment of the filing fee, as required by 28 U.S.C. § 1915(b)(1). Having screened the complaint as required by 28 U.S.C. § 1915A, I conclude that plaintiff has stated a claim upon which relief may be granted under the First Amendment against each of the defendants.

¹ Plaintiff refers to defendant Ratdke as “Ratdk” in the caption of his complaint, but I am including the “e” in the court’s caption because that is how he refers to this defendant throughout the body of his complaint and it is the more common spelling of the name.

OPINION

Plaintiff alleges that each of the defendants retaliated against him for a grievance he filed in which he alleged that a correctional officer at the Waupun prison was being demoted because she fabricated conduct reports about prisoners being involved in gang activity. He says that he knows the reason for the demotion because he overheard other correctional officers talking about it.

With respect to the personal involvement of each defendant, plaintiff alleges that defendant Larsen (a lieutenant) wrote plaintiff a conduct report for lying about staff; defendant Meli (the security director) allowed the disciplinary proceeding to go forward; defendant Radtke (a captain) refused to allow plaintiff to call witnesses at the disciplinary hearing; defendant Sabish (a lieutenant) found plaintiff guilty of the conduct report; defendant Pollard (the warden) directed Larsen to write the conduct report and affirmed the disciplinary decision; defendants Moon and Muenchow (complaint examiners) rejected grievances plaintiff filed about the subject and refused to initiate an investigation. Plaintiff contends that each of the defendants took these actions to retaliate against him for filing the first grievance.

I conclude that plaintiff's allegations state a claim upon which relief may be granted under the First Amendment. Prison officials may not retaliate against a prisoner for exercising a constitutional right if the officials' conduct is sufficiently adverse to deter a prisoner of "ordinary firmness" from exercising his rights. Bridges v. Gilbert, 557 F.3d 541, 552 (7th Cir. 2009); Pearson v. Welborn, 471 F.3d 732, 738 (7th Cir. 2006). Plaintiff has

constitutional rights under the First Amendment to free speech and to petition the government for redress of grievances, which include the right to file grievances about misconduct by prison officials. Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007); Pearson, 471 F.3d at 740-41. Further, the Court of Appeals for the Seventh Circuit has stated that allegations of false disciplinary charges and “improper dismissal” of grievances are sufficient to show at the screening stage that the defendants’ actions would deter a person of ordinary firmness from exercising his constitutional rights. Bridges, 557 F.3d at 552.

Plaintiff should know that he will not be able to stand on his allegations at later stages in the case. To prove his claims at summary judgment or trial, he will have to come forward with specific facts showing that a reasonable jury could find in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56. 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).

Plaintiff will have to come forward with evidence either at summary judgment or at trial that defendants disciplined him or rejected his grievances because of the exercise of his constitutional rights and not for some legitimate reason. This means that he will have to prove that defendants subjected him to adverse treatment because he was complaining about

staff misconduct, *not* because they believed he was lying about staff.

The Court of Appeals for the Seventh Circuit has held that false accusations against staff in prisoner grievances are not protected by the First Amendment. Hasan v. United States Dept. of Labor, 400 F.3d 1001, 1005 (7th Cir. 2005); Hale v. Scott, 371 F.3d 917 (7th Cir. 2004). Further, even if plaintiff's grievance was accurate, that would not necessarily be enough to hold defendants liable if they honestly believed that plaintiff was lying about staff. In other words, plaintiff will have to show not only that he was telling the truth in his grievance, but that defendants *knew* that he was telling the truth. Wilson v. Greetan, 571 F. Supp. 2d 948, 955 (W.D. Wis. 2007). See also Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) ("[P]urpose rather than knowledge is required to impose . . . liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged with violations arising from his or her superintendent responsibilities."). It will not be enough for plaintiff to show that defendants acted foolishly or by mistake in disciplining him. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006). If defendants honestly believed that plaintiff's grievance was fabricated, his claim for retaliation will fail.

ORDER

IT IS ORDERED that

1. Plaintiff Terrance D. Prude is GRANTED leave to proceed on his claim under the First Amendment that defendants William Pollard, Lieutenant Larsen, Toni Meli, Captain Radtke and Lieutenant Sabish disciplined plaintiff and defendants Toni Moon and Examiner

Muenchow rejected plaintiff's grievances because he accused a correctional officer of misconduct.

2. For the time being, 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 his documents.

4. 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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 defendants.

Entered this 4th day of September, 2013.

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