

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

BENNY O. CHOICE,

Plaintiff,

v.

OPINION and ORDER

ANDREW J. LARSON, RANDALL
R. HEPP, SGT. LEHMAN, TONIA
MOON, CPS PUSICH, CO KROLL
WALTZ, and CO WENDRICKS,

21-cv-413-wmc¹

Defendants.

Plaintiff Benny O. Choice is a prisoner at Waupun Correctional Institution. Choice alleges that the contents of his lockbox were lost or destroyed because correctional officers failed to properly secure his property after he was taken to segregation. He seeks leave to proceed in forma pauperis, and he has made an initial partial payment of the filing fee as previously directed by the court.

The next step is for me to screen Choice's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In doing so, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). I will dismiss the case because Choice does not state a claim under federal law and this court cannot exercise jurisdiction over his state-law claims.

¹ I am exercising jurisdiction over this case for the purpose of this screening order only.

ALLEGATIONS OF FACT

On October 14, 2010, Choice was taken to segregation. Officer Lehman packed up Choice's property that was in his cell but overlooked Choice's lockbox. Choice's cellmate repeatedly told correctional staff over the next four days that the property in Choice's lockbox still needed to be packed up. Other than Choice, only correctional officers could remove its padlock. Officer Wendricks finally gave Choice's cellmate a garbage bag. After the cellmate had placed the contents of the lockbox in the bag, Wendricks left the bag outside the cell where it remained "for hours." Dkt. 1, at 3. During that time, Choice's property was lost or destroyed, including pictures of family and friends, poetry and music, business plans and designs, legal materials, school and program certificates, \$70 of canteen, and shower shoes among other items. Although Choice complained about the issue, "[o]fficers and other WCI/DOC personnel" disregarded his concerns and failed to resolve the problem. *Id.*

ANALYSIS

Choice contends that defendants were negligent and did not follow their work rules or proper policy and procedure by failing to secure his lockbox property or to fully investigate the incident. In terms of federal law, Choice's allegations implicate the Due Process Clause of the Fourteenth Amendment that prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. To state a procedural due process claim, a plaintiff's allegations must demonstrate that he: (1) has a cognizable property or liberty interest; (2) has suffered a deprivation of that interest; and (3) was denied due process. *Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010).

Choice describes a frustrating situation, but he cannot proceed on a due process claim. Choice has an interest in the personal property taken from him, but he does not allege that any of the defendants deprived him of that property. Rather, Choice claims that Lehman overlooked the lockbox and Wendricks later left the property in a bag outside Choice's cell, where it was taken or destroyed by unknown individuals. That Lehman or Wendricks, or any other defendant, was negligent or violated department work rules or procedures in failing to fully secure Choice's property, without more, does not violate his federal constitutional rights either. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986) ("the Due Process Clause is simply not implicated by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property" (emphasis in original)); *Pulera v. Sarzant*, 966 F.3d 540, 551 (7th Cir. 2020) (a violation of a jail policy is not a constitutional violation enforceable under § 1983); *Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003) (section 1983 protects plaintiffs from constitutional violations, not violations of state laws or departmental regulations). And even if Choice's allegations suggested that Lehman or Wendricks, or another defendant, took or destroyed his property, Choice could not bring a due process claim because Choice had postdeprivation remedies available to him. *See, e.g., Tyler v. Wick*, No. 14-cv-68-jdp, 2016 WL 5496631, at *6 (W.D. Wis. Sept. 29, 2016) (discussing postdeprivation remedies such as Wisconsin causes of action for conversion of property), *aff'd*, 680 F. App'x 484 (7th Cir. 2017).

Choice also alleges that "[o]fficers and other WCI/DOC personnel . . . were negligent in their duty to investigate [his] requests and complaints" and find out what happened to his property. Dkt. 1, at 3. However, prison grievance procedures "do not by their very existence create interests protected by the Due Process Clause," so the mishandling of complaints or grievances without participation in the underlying conduct does not state a claim. *Owens v.*

Hinsley, 635 F.3d 950, 953 (7th Cir. 2011). And while Choice lists individual prison staff members as “involved,” dkt. 1, at 3, he gives them no notice of his specific allegations against each of them. *See Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006) (Federal Rule of Civil Procedure 8 requires a “short and plain statement of the claim’ sufficient to notify the defendants of the allegations against them and enable them to file an answer.”).

The bottom line is that Choice’s allegations suggest a violation of only state law. *See Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860 (listing the elements of a negligence claim). A federal court generally does not have jurisdiction over a state-law claim unless it is related to a federal claim that is pending in the same case, 28 U.S.C. § 1367, or the plaintiff and defendants are citizens of different states and the amount in controversy is greater than \$75,000, 28 U.S.C. § 1332. Choice does not have a viable federal claim so I will not exercise jurisdiction under § 1367. Choice does not allege that he and defendants are citizens of different states and nothing in the complaint suggests that they are, so I cannot exercise jurisdiction under § 1332.

I see no way that Choice could clarify or explain his allegations in a way that would state a due process or other federal claim, so I will not provide him with an opportunity to amend his complaint. *See Bogie v. Rosenberg*, 705 F.3d 603, 608 (7th Cir. 2013) (“[I]leave to amend need not be granted, however, if it is clear that any amendment would be futile”).

ORDER

IT IS ORDERED that:

1. Choice’s motion for expedited screening of his complaint, Dkt. 9, is DENIED as moot.

2. Plaintiff Benny O. Choice's complaint, Dkt. 1, is DISMISSED with prejudice with respect to Choice's federal claims for failure to state a claim upon which relief can be granted. Choice's state-law claims are dismissed without prejudice because the court declines to exercise supplemental jurisdiction over the state-law claims.
3. The court will not record a strike against Choice under 28 U.S.C. § 1915(g) because the court did not dismiss all claims in this lawsuit for one of the reasons in § 1915(g).
4. The clerk of court is directed to close this case.

Entered August 31, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge