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

KENNETH J. THOMAS,

Plaintiff,

v.

OFFICER JILL KOLLMANN, SGT. CHAMBERLAIN, and SUPERVISOR CHRISTOPHER SCHWAB,

Defendants.

OPINION and ORDER

22-cv-746-wmc[1]

Pro se plaintiff Kenneth Thomas contends that three Waupun Correctional Institution officers falsely charged him with violating prison policy, in violation of his constitutional rights. Thomas is incarcerated and proceeding in forma pauperis, so the next step is to screen his complaint and dismiss any portion that is legally frivolous or 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. When screening a pro se litigant's complaint, I 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).

Thomas's complaint does not state a constitutional claim, so I am dismissing it with prejudice.

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[1] I am exercising jurisdiction over this case for purposes of screening only.

ANALYSIS

Thomas alleges that defendants, officers working in his housing unit at Waupun, falsely charged him in a conduct report. He says that during an August 2022 cell count, his cellmate refused to stand, which violated prison policy. Although Thomas had not violated policy, defendant Officer Jill Kollman ordered him to move to the bottom bunk. Thomas objected on a number of grounds, including that his cellmate was threatening him. Kollman charged Thomas in a conduct report with disobeying orders and disruptive conduct, and Thomas says that she falsified the details of the incident. Kollman did not charge Thomas's cellmate with any policy violation. Thomas says that defendants Sergeant Chamberlain and Supervisor Christopher Schwab assisted in charging him. Thomas's attachments to his complaint show that he was punished with ten days of room confinement. Dkt. 1-3, at 1. Those attachments also show that the conduct report was dismissed on appeal. *Id.* at 2.

Thomas contends that defendants violated his rights to due process and equal protection. The Due Process Clause of the Fourteenth Amendment 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 § 1983 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).

As for the first element, the Supreme Court has explained that a prisoner's cognizable liberty interests "will be generally limited to freedom from restraint which . . .

imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 483–484 (1995). A period of segregated confinement may be "atypical and significant" "if the length of segregated confinement is substantial and the record reveals that the conditions of confinement are unusually harsh." *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 697–98 (7th Cir. 2009) (holding that a prisoner's confinement in segregation for 240 days may implicate a liberty interest). Thomas was punished to just ten days of room confinement, which falls far short of the type of deprivation that constitutes a loss of liberty. But even if Thomas suffered a loss of liberty, an improperly motivated or even false conduct report does not amount to a denial of due process. *See Lagerstrom v. Kingston*, 463 F.3d 621, 624–25 (7th Cir. 2006) (false conduct reports do not create procedural due process claim because inmate has ability to litigate truthfulness of report through hearing process). So, Thomas does not state a due process claim.

Thomas also contends that defendants violated his Fourteenth Amendment right to equal protection because they punished him but not his cellmate. A plaintiff may bring a "class of one" equal protection claim for being treated "intentionally . . . differently from others similarly situated" for no rational reason. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 799 (7th Cir. 2015) (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). But class of one claims are generally disfavored in the prison setting, particularly where they involve discretionary decision-making by prison officials, like in the employment or disciplinary contexts. *See Lewis v. Henneman*, No. 16-cv-733, 2018 WL 2390117, at *7

(W.D. Wis. May 24, 2018); *Talioferro v. Hepp*, No. 12-cv-921, 2013 WL 936609, at *6 (W.D. Wis. Mar. 11, 2013) (collecting cases).

I have concluded in other cases in which prisoners challenged discretionary decisions that prison staff were entitled to qualified immunity. *See Williams v. Schultz*, No. 22-cv-2, 2022 WL 3138903, at *2 (W.D. Wis. Aug. 5, 2022) (prison officials who decided to assign plaintiff to a three-person escort were entitled to qualified immunity on class-of-one claim because "security decisions like this are discretionary"); *Lewis v. Henneman*, No. 16-cv-733, 2018 WL 2390117, at *7 (W.D. Wis. May 24, 2018) (prison officials entitled to qualified immunity on class of one claims about false conduct reports). Although defendants have not been served and have not raised qualified immunity as an affirmative defense, I have the authority to do so here because Thomas's allegations make this defense obvious. *See Gleash v. Yuswak*, 308 F.3d 758, 760 (7th Cir. 2002) (judges may raise affirmative defense if it "is so plain from the language of the complaint and other documents in the district court's files that it renders the suit frivolous."). Therefore, Thomas may not proceed on a class of one claim.

The court of appeals has cautioned against dismissing a pro se plaintiff's case without giving the plaintiff a chance to amend. *Felton v. City of Chicago*, 827 F.3d 632, 636 (7th Cir. 2016). But in this case, dismissal of Thomas's claims with prejudice is appropriate. Thomas's allegations and attachments to his complaint establish that he did not suffer a loss of liberty, and I cannot conceive of a scenario in which he would be able to state a class of one claim. Therefore, Thomas would not be able to supplement his complaint, consistent with his current allegations and the attachments to his complaint, to

support a plausible theory for relief. I will dismiss Thomas's complaint with prejudice for failure to state a claim upon which relief can be granted. Because Thomas has failed to state a federal claim, I will direct the clerk of court to record a strike under 28 U.S.C. § 1915(g).

ORDER

IT IS ORDERED that:

1. Plaintiff Kenneth Thomas's complaint is DISMISSED with prejudice for failure to state a claim upon which relief can be granted.

2. The clerk of court is directed to record this dismissal as a strike under 28 U.S.C. § 1915(g).

Entered February 1, 2023.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge