

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

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SAMUEL J. TRINIDAD,

Petitioner,

OPINION AND ORDER  
99-C-299-C

V.

GARY R. McAUGHTRY, Waupun  
Correctional Institution,  
JON E. LITSCHER, Wisconsin Department  
of Corrections,  
PETER HUIBREGTSE, CAPTAIN MURASKI,  
M. GLAMMAN, DAVID HAUTAMAKI,  
and W. SCHULTZ,

Respondents.

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Petitioner Samuel J. Trinidad brought this proposed civil action for declaratory, injunctive and monetary relief pursuant to 42 U.S.C. §§ 1983 and 1985(3). Petitioner is an inmate at Waupun Correctional Institution in Waupun, Wisconsin and is a member of the Moorish Science Temple of America, a religious sect of the Muslim faith. In an opinion and order entered September 20, 1999, I denied petitioner leave to proceed in forma pauperis. I

understood petitioner to contend that respondents: 1) violated his First Amendment right to freely exercise his religion by failing to send a letter because of Muslim prayer language in the letter and because the letter was addressed to Mustafa'el, another Muslim; 2) conspired to deprive him of his constitutional rights under 42 U.S.C. § 1985(3); and 3) violated the equal protection clause of the Fourteenth Amendment by treating members of the Moorish Science Temple of America differently from members of other religions because of the Temple's racial makeup. In that same order, I dismissed petitioner's First Amendment and § 1985 claims for his failure to state a claim upon which relief may be granted and I dismissed his Fourteenth Amendment claim for his failure to exhaust his administrative remedies before filing suit. In an order entered on October 4, 1999, I denied petitioner's motion pursuant to Fed. R. Civ. P. 59 for reconsideration of the dismissal of his First Amendment claim. Petitioner appealed.

In an opinion entered June 26, 2000, the Court of Appeals for the Seventh Circuit affirmed the dismissal of petitioner's equal protection and conspiracy claims but vacated the dismissal of petitioner's allegations that Wis. Admin. Code § DOC 303.20 was applied improperly in his case. See Trinidad v. McCaughtry, No. 99-4046, slip op. at 4 (7th Cir. June 26, 2000). The court of appeals disagreed with this court's interpretation of petitioner's First Amendment claim, concluding that, “[petitioner] asserts that prison officials mischaracterized his prayer as gang-related language and, thus, improperly applied the anti-gang regulation to

his well-intentioned prayer letter.” Id. at 3. The court further noted that petitioner's complaint should have been understood to request review of the adequacy of the prison disciplinary committee's “finding that [petitioner's] prayer was actually gang language.” Trinidad, slip op. at 3. Noting that “Prison disciplinary board conclusions must be supported by 'some evidence,’” Lenea v. Lane, 882 F.2d 1171, 1175 (7th Cir. 1989) (quoting Superintendent v. Hill, 472 U.S. 445, 454-56 (1985)), the Seventh Circuit concluded that, “The record before us is barren of the information that we need to ascertain whether any evidence was presented to the board in support of its apparent finding that the debated prayer language is gang related.” Trinidad, slip op. at 3.

Subject matter jurisdiction is present. See 28 U.S.C. § 1331. On remand, I conclude that petitioner's procedural due process claim is without legal merit. Therefore, petitioner's request for leave to proceed in forma pauperis with respect to this claim must be denied.

The facts alleged in petitioner's complaint relating to the remanded claim are as follows.

#### ALLEGATIONS OF FACT

Petitioner Samuel J. Trinidad is an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. Petitioner is a Moorish Muslim and member of the Moorish Science Temple of America which adheres to the Circle 7 Koran. Respondents are employees of

Waupun Correctional Institution except for Jon E. Litscher who is the secretary at the Wisconsin Department of Corrections: respondent Gary R. McCaughtry is the warden at the institution; respondent Peter Huibregtse is the security director of the institution; respondent Captain Muraski is a security captain at the institution; respondent M. Glamman is a correctional officer at the institution; respondent David Hautamaki is a security lieutenant at the institution; and respondent W. Schultz has an unspecified position at the institution.

On October 10, 1998, respondent Glamann intercepted a letter petitioner sent to Mustafa'el (Dennis E. Jones), who had been labeled by the institution as a member of the Vice Lords gang. Respondent Glamann intercepted the letter because it said, "Praise be to Allah! Father of Love, Truth, Peace, Freedom and Justice. My Strength, my Shelter." Petitioner had written those words on letters that had not been intercepted.

On October 10, 1998, respondent Glamann wrote petitioner a conduct report, charging petitioner with group resistance and petitions in violation of Wis. Admin. Code § DOC 303.20 (generally referred to as "gang activity"). In addition, respondent Glamann charged petitioner with disobeying an order by using the above-quoted language in violation of Wis. Admin. Code § DOC 303.24, alleging that petitioner was a Vice Lord and that the prayer implied Vice Lord membership. The institution believes Temple members are Vice Lords because Vice Lords allegedly embrace some of the Temple's teachings. Respondent Muraski provided respondent

Glamann with Vice Lord literature and told Glamann that the prayer belonged to the Vice Lords. Respondent Huibregtse approved respondent Glamann's conduct report and upgraded the charge to a major offense with a penalty of up to 184 days in solitary confinement. The conduct report did not include any allegations that petitioner's prayer expressed any defined gang activity or that petitioner disobeyed any written rule.

On November 2, 1998, at petitioner's disciplinary hearing, respondent Hautamaki and respondent Schultz acted as the hearing committee. They alleged that petitioner was a Vice Lord, that the Temple prayer belonged to the Vice Lords and that the Temple meetings were gang meetings. Petitioner was given 184 days' solitary confinement. Petitioner appealed the finding of the hearing committee and filed an inmate complaint with respondent warden McCaughtry regarding the conduct report. Respondent McCaughtry affirmed the findings of the hearing committee. On January 1, 1999, petitioner filed a second step inmate complaint to Jon E. Litscher, the appropriate reviewing authority, complaining that the Temple was labeled a gang and that he received a conduct report for writing and embracing Mustafa'el.

#### OPINION

In remanding this matter, the court of appeals assumed that petitioner's disciplinary hearing implicated due process concerns. I believe this was an oversight by the court. In

Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that 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.” After Sandin, in the prison context, protectible liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty).

After Sandin, 184 days in solitary confinement does not amount to an “atypical, significant deprivation.” If petitioner had alleged the loss of a protectible liberty interest, it is clear that petitioner's due process claim would be governed by the Supreme Court's holding in Superintendent, 472 U.S. at 455, that “the requirements of due process are satisfied if *some evidence* supports the decision by the prison disciplinary board to revoke good time credits.” However, in the absence of a protectible liberty or property interest, the validity of the prison review board's decision is beyond the reach of the courts' reviewing power.

#### ORDER

IT IS ORDERED that petitioner Samuel J. Trinidad's request for leave to proceed in

forma pauperis on his Fourteenth Amendment claim is DENIED. The clerk of court is directed to enter judgment for respondents and close this case.

Entered this 30th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge