

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

RAYMOND COHEN,

Petitioner,

OPINION AND ORDER
01-C-206-C

v.

SGT. O'NEILL, SGT. SUNDET, SGT. ROGERS,
CAPT. MILLER, LT. LEAVITT, CAPT. SAUNDERS,
SGT. FLANNERY, LT. SPROEHLICH, CAPT. TESSMAN,
SGT. GOVIER, SGT. HOFER, LT. CALDWELL,
SGT. HOLTON, SGT. CLARK, SGT. TRAAS, SGT. JOYCE,
CAPT. SPOERL, LT. JANES, PEGGY FRITZ, DEB MEYER,
SEC. DIR. LEMKE, WARDEN FARREY, SGT. KELLY,
SGT. MAY, CPL. CIACCHI, CPL. SEIKERT, CPL. DIEHL, and
UNKNOWN PROCESS SERVERS,

Respondents.

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Raymond Cohen seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Petitioner is suing prison officials for acts that occurred while he was an inmate at Waupun

Correctional Institution; however, because he is no longer incarcerated, he is not subject to the Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Petitioner's request for leave to proceed in forma pauperis will be denied because he has failed to state a claim that respondents violated his Fourteenth Amendment rights.

The following is a brief summary of the allegations in petitioner's forty-page complaint.

ALLEGATIONS OF FACT

Petitioner was an inmate at Waupun Correctional Institution; he was released on parole on March 27, 2001 because he had reached his mandatory release date. The following respondents are employees at Oshkosh Correctional Institution: respondent Catherine Farrey is the warden; respondent David Lemke is the security director and associate warden; and respondent Saunders is the security segregation captain. The

following respondents are employees at Fox Lake Correctional Institution: respondent Kenneth Sondalle is the warden; respondent Fred Meyer is the security director and associate warden; and respondent Lockwood is the security segregation captain.

Petitioner challenges the procedures he was afforded following his receipt of 42 conduct reports. Petitioner alleges that as a result of the challenged conduct reports, he received the following punishments: a reprimand; 1-10 days' room confinement; 15-60 days' building confinement; 30 days' loss of common area privileges; 10 days' loss of room visit privileges; 15 days' loss of television room; 10 days' loss of recreation; 10-15 days' loss of phone use; temporary and permanent loss of canteen privileges; 30 days' 24-hours extra duty; loss of institution pay; 3-6 days' adjustment segregation; temporary lockup; and 60-120 days' program segregation.

OPINION

The Fourteenth Amendment prevents the state from depriving someone of life, liberty or property without due process of law -- usually in the form of notice and some kind of hearing by an impartial decision maker. A procedural due process claim against government officials requires proof of inadequate procedures *and* interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). 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, protected 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). Petitioner's allegations as to the punishments he received for his 42 conduct reports do not amount to “atypical, significant deprivations” and therefore do not implicate protected liberty interests. Petitioner does not allege that his time in temporary lock-up extended the overall length of his sentence or that he lost good time credits. Accordingly, petitioner's request for leave to proceed in forma pauperis on his Fourteenth Amendment claim will be denied because it is frivolous.

ORDER

IT IS ORDERED that petitioner Raymond Cohen's request for leave to proceed in

forma pauperis is DENIED as frivolous. The clerk of court is directed to close this case.

Entered this 24th day of May, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge