IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

SOL COLEMAN JR.,

ORDER

Petitioner,

01-C-663-C

v.

JACKSON CORRECTIONAL INST., et al.,
JON E. LITSCHER, Secretary Wis. Dept. Corr.,
TOM KARLEN, Warden, JCI,
LIZZIE TEGELS, Melrose Unit Manager, JCI,
CPT. LACOSTE, JCI., LT. FOSTER, JCI,
JOHN RAY, Corrections Complaint Examiner,
J. KRUTZE, Inmate Complaint Examiner, JCI,

Respondents.

- -

This is a proposed civil action for declaratory, injunctive and monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Sol Coleman Jr. contends that respondents violated his constitutional rights while he was incarcerated at Jackson Correctional Institution in Black River Falls, Wisconsin. Specifically, petitioner contends that respondents violated his Fourteenth Amendment right of access to the courts by not allowing him to use the law library for 30 days and his Fourteenth Amendment right to due process by not correcting the violation through the inmate complaint review system. Petitioner 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. Jurisdiction is present under 28 U.S.C. § 1331.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U. S. 319 (1989).

Petitioner's request to proceed in forma pauperis on his Fourteenth Amendment claim of denial of access to the courts and due process will be denied because the claims are legally frivolous.

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

At all times relevant to this complaint, petitioner Sol Coleman, Jr. was an inmate at Jackson Correctional Institution in Black River Falls, Wisconsin. Petitioner is no longer incarcerated. Respondent Jon E. Litscher was secretary of the Department of Corrections. Respondent Tom Karlen was warden of Jackson Correctional Institution. Respondent Lizzie Tegels was the unit manager of Melrose Unit at the institution. Respondent Captain LaCoste was a captain of security and respondent Lieutenant Foster was a lieutenant.

Respondent John Ray was the corrections complaint examiner. Respondent J. Krutke was an inmate complaint examiner at the institution.

A. Denial of Access to the Courts

While petitioner was incarcerated at Jackson, he had a petition for a writ of habeas corpus pending in the Court of Appeals for Wisconsin, State ex rel Coleman v. Kingston, case no. 00-0322. In that case, the court of appeals affirmed the circuit court's order denying plaintiff's petition. Petitioner received the court of appeals' order on January 19, 2001, and had 30 days in which to file a petition for review to the Wisconsin Supreme Court. His deadline was February 16, 2001.

On January 10, 2001, petitioner received a conduct report. On January 19, 2001, a hearing was held by respondent Tegels. As a result of the conduct report, petitioner was given 15 days of room confinement and 15 days' loss of law library, to start after the room confinement ended. The practical effect of these penalties was that petitioner lost his law library privileges for 30 days. The underlying incident had nothing to do with the law library. Petitioner brought it to respondent Tegels' attention that he had legal matters pending before the courts with deadlines to meet. Petitioner showed Tegels documentation of the deadlines. Specifically, petitioner informed Tegels that he had to have a brief filed in the courts within 30 days of January 19, 2001. Tegels told petitioner that she did not care

about petitioner's legal obligations and that she would not change the punishment.

On the same day, petitioner told respondent Lieutenant Foster that Tegels was violating petitioner's right of access to the courts by not allowing him to perform research on his pending cases. Instead of changing the punishment, Foster told petitioner that the law library at Jackson is not a right but a privilege.

On or about January 22, 2001, petitioner brought the matter to respondent Karlen's attention when he appealed the conduct report. Petitioner asserted that he was being denied access to the law library to do research for cases pending in the courts. Petitioner asked Karlen to respond immediately. Instead of changing the punishment, Karlen upheld the disposition of the conduct report issued by Tegels.

On February 3, 2001, petitioner spoke with respondent Captain LaCoste about the alleged violations of his rights. Respondent LaCoste told petitioner that he would get back to petitioner. Instead of changing the punishment, respondent failed to take any action regarding petitioner's access to the law library.

On February 6, 2001, respondent spoke with respondent warden Karlen about the denial of his access to the law library. Karlen told petitioner that there was nothing that he could do and that petitioner would have to wait until Karlen had time to look over the appeal that petitioner had filed with Karlen on January 22.

B. Due Process: Inmate Complaint

On February 5, 2001, petitioner filed inmate complaint no. JCI-2001-4293, alleging that his rights were being violated because he was under a time limit to submit his brief to the Wisconsin Supreme Court. On February 12, 2001, respondent Krutke dismissed the complaint with modifications. Respondent Krutke did not contact petitioner to substantiate the documentation that petitioner had readily available showing the pending court deadlines. Krutke knew that the restrictions she was imposing at such a late date would not allow petitioner to meet the court deadline for filing the petition for review in case no. 00-0322.

After petitioner received the dismissed complaint requiring petitioner to provide respondent Tegels with documentation of pending court deadlines, Tegels did not show up on the Melrose Unit until February 17, 2001, one day after petitioner had missed the deadline for filing the petition for review to the Wisconsin Supreme Court. Tegels knew that she was the only person who could or would allow petitioner to go to the law library.

On February 17, 2001, petitioner filed an appeal to corrections complaint examiner respondent Ray. On March 9, 2001, Ray recommended dismissing the appeal and on March 10, 2001, Ray's recommendation was accepted as the decision of respondent Litscher.

On February 23, 2001, petitioner filed another inmate complaint (no. JCI-2001-6276), seeking monetary damages and to be "PRC'ed out" of the institution. The complaint was rejected by respondents Karlen and Krutke, stating that the issue had been previously

addressed in complaint no. JCI-2001-4293. On March 17, 2001, petitioner appealed the dismissal to respondents Ray and Litscher, both of whom affirmed dismissal of the complaint.

DISCUSSION

A. Access to the Courts

It is well established that prisoners have a constitutional right of access to the courts for pursuing post-conviction remedies and for challenging the conditions of their confinement. Campbell v. Miller, 787 F.2d 217, 225 (7th Cir. 1986) (citing Bounds v. Smith, 430 U.S. 817 (1977)); Wolff v. McDonnell, 418 U.S. at 539, 578-80 (1974); Procunier v. Martinez , 416 U.S. 396, 419 (1974). The right of access is grounded in the due process and equal protection clauses of the Fourteenth Amendment. Murray v. Giarratano, 492 U.S. 1, 6 (1989). To insure meaningful access, states have the affirmative obligation to provide inmates with "adequate law libraries or adequate assistance from persons trained in the law." Bounds, 430 U.S. at 828.

To have standing to bring a claim of denial of access to the courts, a plaintiff must allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). The plaintiff must have suffered injury "over and above the denial." Walters v. Edgar, 163 F. 3d 430, 433-34 (7th Cir. 1998) (citing Lewis , 518 U.S. 343). At

a minimum, the plaintiff must allege facts showing that the "blockage prevented him from litigating a nonfrivolous case." Id. at 434; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint). In addition, Lewis made clear that the right of access to the courts pertains only to direct appeals of a criminal conviction, a habeas corpus petition or a civil rights action vindicating basic constitutional rights. Id. at 354-55 (inmates must be provided tools "in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement" only).

Petitioner asserts that as punishment for a conduct report, he was not allowed to go to the law library for 30 days, which caused him to miss the deadline for filing a petition for review to the Wisconsin Supreme Court. First, a second-tier appeal does not constitute a direct appeal. Therefore, the allegation that respondents prevented petitioner from litigating a petition for review to the supreme court is not one of the injuries enumerated in Lewis. Id. In addition, petitioner does not explain why he could not obtain an extension of time in which to file his petition for review. Petitioner's allegations do not suggest that his inability to use the law library caused him to miss the deadline for filing a petition for review. Thus, petitioners' request for leave to proceed on his claim that respondents Tegels, Foster, Karlen and LaCoste violated petitioner's right of access to the courts will be dismissed for failure to state a claim upon which relief may be granted.

B. Due Process

Petitioner alleges that respondents Krutke, Tegels, Karlen, Ray and Litscher dismissed his inmate complaints rather than using the inmate complaint review system to correct the alleged violation of his right to access to the courts. I understand petitioner to be contending that respondents violated his right to due process under the Fourteenth Amendment by not following proper procedures in the inmate complaint review system.

The adoption of mere procedural guidelines does not give rise to a protected liberty interest. Culbert v. Young, 834 F.2d 624, 628 (7th Cir. 1987), cert. denied, 485 U.S. 990 (1988); Studway v. Feltman, 764 F. Supp. 133, 134 (W.D. Wis. 1991). In Studway, the plaintiff contended that the defendant's failure to conduct a disciplinary hearing within 21 days of the conduct charged violated his due process rights. In granting the defendant's motion to dismiss the complaint, I concluded that the failure to hold a disciplinary hearing within the 21-day time period established in Wis. Admin. Code § DOC 303.76(3) did not place a substantive limit on the decision maker's determination of what conduct may be subject to prison discipline but was merely a procedural regulation that did not give rise to a constitutional claim. Id. at 135.

Petitioner's claim fails for the reasons set out in Studway. Petitioner alleges that respondents dismissed his inmate complaints without an honest investigation, including seeking documentation of petitioner's court deadline. The requirement to conduct an

investigation into inmate complaints is a procedural rule that does not give rise to a protected liberty interest. Petitioner may have a state law claim for violation of the regulation but he does not have a federal constitutional claim. Petitioner will be denied leave to proceed on his Fourteenth Amendment due process claim against respondents Krutke, Tegels, Karlen, Ray and Litscher because the claim is legally frivolous.

ORDER

IT IS ORDERED that

1. Petitioner's request for leave to proceed in forma pauperis on his claim for denial of access to the courts against respondents Tegels, Foster, Karlen and LaCoste and on his due process claim against respondents Krutke, Tegels, Karlen, Ray and Litscher is DENIED because the claims are legally frivolous.

2. The clerk of court is directed to enter judgment for respondents and close this case.

Entered this 28th day of December, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge