

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

BRENTFORD TAYLOR,

Petitioner,

v.

ORDER

02-C-0548-C

PHYILLIS J. DUBE, in her official and individual capacity; JON E. LITSCHER, in his official and individual capacity; BYRON BARTOW, in his official and individual capacity; MARIO CANZIANI, in his official and individual capacity; KELLY ZAREMBR, in her official and individual capacity; MICHELLE COOPER, in her official and individual capacity; DAM SMITHBACK, in his official and individual capacity; and SARAH CORCORAN in her official and individual capacity,

Respondents.

On October 29, 2002, I dismissed this case for lack of subject matter jurisdiction over petitioner's claim that his civil rights had been violated when he slipped and fell and was injured at what he described as an unsafe private facility. Judgment was entered on October 31, 2002.

On November 14, 2002, petitioner filed a motion for reconsideration that I construe as a timely filed motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. In his motion, petitioner argues that the court erred in dismissing his case for lack of jurisdiction. He contends that the court should have understood that his claim is that his working conditions constitute cruel and unusual punishment under the Eighth Amendment. Petitioner asserts that the lack of fire exit signs, lack of warning labels on the equipment and the failure to instruct him to remove the plastic wrap from the floor created an unsafe work environment, which, in turn, constitutes cruel and unusual punishment because he is required to work pursuant to Wis. Admin. Code § DOC 303.61.

Because petitioner has clarified his intention to have his claim considered as one of constitutional wrongdoing, I will vacate the judgment of dismissal for lack of jurisdiction. This court has subject matter jurisdiction over constitutional claims. However, I will deny petitioner's request for leave to proceed in forma pauperis on his constitutional claim because it is legally frivolous. Even if respondents failed to instruct petitioner to remove the plastic wrap from the floor or failed to post warning labels or exit signs, his claim does not rise to the level of an Eighth Amendment violation. The alleged lack of safety instructions or warnings do not create a condition of confinement that is "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

ORDER

IT IS ORDERED that

1. Petitioner Brentford Taylor's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is GRANTED; the judgment entered herein on October 30, 2002, is VACATED.

2. Petitioner's request for leave to proceed in forma pauperis on a claim that his Eighth Amendment right to be free from cruel and unusual punishment was violated because he was required to work in unsafe conditions is DENIED as legally frivolous.

3. The clerk of court is directed to enter an amended judgment dismissing this case as legally frivolous.

4. A strike is recorded against petitioner pursuant to 28 U.S.C. § 1915(g).

Entered this 21st day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge