IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TONY WALKER,

OPINION AND ORDER

Plaintiff,

02-C-0430-C

v.

JON E. LITSCHER; CINDY O'DONNELL;
STEVEN CASPERSON; JOHN RAY;
DANIEL R. BERTRAND; FRANCIS LARDINOIS;
WENDY BRUNS,

Defendants.

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This is a civil action for monetary, declaratory and injunctive relief brought pursuant to 42 U.S.C. § 1983. At issue in this case is the effect that three prison policies have on a prisoner's ability to correspond with persons outside the prison. First, inmates at the prison are required to purchase stamps and envelopes from the prison canteen; they may not receive those materials from persons outside the prison. Second, when an inmate is in debt, all funds earned by or given to the inmate are deducted to pay his debts; gifts cannot be specially designated to be used for stamps and envelopes so that they are exempted from the deductions. Third, the prison does not provide any free postage to inmates in the general

population, at least for non-legal mail. Plaintiff Tony Walker is an inmate at the Green Bay Correctional Institution who has accumulated thousands of dollars of debt from court filing fees and legal loans. Thus, he cannot purchase stamps or envelopes with his own funds. The question is whether the three policies in conjunction violate plaintiff's right under the First Amendment to communicate with persons outside the prison.

Presently before the court is defendants' motion for summary judgment. Although plaintiff has failed to oppose defendants' motion, I must still determine whether the undisputed facts show that plaintiff is entitled to summary judgment. Doe v. Cunningham, 30 F.3d 879, 883 (7th Cir. 1994). Because I conclude that the prison's policies are reasonably related to legitimate penological interests, I will grant defendants' motion for summary judgment.

From defendants' proposed findings of fact and the record, I find that the following facts are material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Tony Walker is presently confined at the Oshkosh Correctional Institution. Defendant Jon Litscher is Secretary of the Wisconsin Department of Corrections. Defendant Cindy O'Donnell is Deputy Secretary of the department. Defendant Steven

Casperson is administrator of the department's Division of Adult Institutions.

Defendant Daniel Bertrand is the warden of Green Bay Correctional Institution. Defendant Francis Lardinois is a correctional sergeant at the prison. Defendant John Ray is a corrections complaint examiner. Defendant Wendy Bruns is an institution complaint examiner.

B. Policy Regarding Stamps and Envelopes

Plaintiff was transferred to Green Bay Correctional Institution on July 2, 1999. He remained there until December 10, 2002, when he was transferred to Oshkosh Correctional Institution. At least since January 1, 2002, all inmates at the Green Bay prison have been required to purchase stamps and envelopes from the prison canteen. Inmates may not receive either stamps or postage-paid envelopes from persons outside the prison. (The record is not clear about the source of this policy. Defendants base their proposed findings of fact on the affidavit of Peter Ericksen, who is the prison's security director and is under the general supervision of defendant Bertrand. Ericksen describes the prohibition only as "the security policy at GBCI." In defendants' answer to plaintiff's complaint, they admit that the prison's "property handbook" requires inmates to purchase stamps and embossed envelopes from the prison canteen. However, there is a letter in the record from defendant Bertrand to plaintiff in which Bertrand writes: "This was not a policy created by GBCI. I suggest you

review the revised IMPs in the institution library." Finally, in their brief defendants state that embossed envelopes are confiscated "as per DOC policy." In light of these conflicting facts, I will assume for the purposes of this opinion that the policy was either written or approved by defendants Litscher, Bertrand and Casperson.)

The reasoning behind the policy is that embossed envelopes sent from outside the prison may be used to hide drugs or other contraband. In particular, the adhesive backing on stamps and the seal of the envelope may be impregnated with drugs. Because it is not possible to detect these drugs visually, it would be necessary to test the stamps and envelopes through expensive and time-consuming chemical analysis.

On March 14, 2002, a package of 25 envelopes sent by plaintiff's sister and embossed with $.34 stamps arrived at the prison for plaintiff. Defendant Lardinois intercepted the package and refused to give the envelopes to plaintiff. Lardinois told plaintiff that the items could be purchased only at the prison canteen. Plaintiff sent several letters to defendant Bertrand, complaining about the policy, but Bertrand would not modify it.

Plaintiff then filed an inmate complaint. On June 14, 2002, defendant Bruns recommended its dismissal. She wrote: "The envelopes were appropriately rejected. DOC 309/IMP #1, which was revised effective 1/1/02, requires offenders receive embossed envelopes through [the] canteen only. The GBCI Approved Articles List dated January 2002 also no longer includes embossed envelopes as an item that may be received from a retail

outlet or from family/friends." On June 18, 2002, defendant Bertrand affirmed defendant Bruns's decision and dismissed plaintiff's complaint.

C. Policy Regarding Deductions from Inmate Accounts

Throughout 2002, plaintiff had unpaid federal court filing fees, unpaid state court filing fees, medical co-pay loans and more than $4,000 in legal loans. Under the policy of the Division of Adult Institutions, "all funds" of an inmate that come "under the control of a Wisconsin institution" are used to pay off debts owed by the inmate. The only income plaintiff received while at the prison was through Institutional Needs (I-Needs), which pays inmates $.08 an hour. "All funds" includes money that inmates earn under the I-Needs program and monetary gifts from persons outside the prison. Inmates cannot designate monetary gifts for the purchase of stamps or envelopes. Because of this policy, any money deposited into plaintiff's non-release accounts was deducted to pay his debts, leaving plaintiff with no funds for the purchase of postage or envelopes from the prison canteen.

The goal of this policy is to encourage responsible management of money by inmates who must learn that devoting their resources to one purpose may make funds unavailable for another purpose. Determining priorities for money management so resources are available for necessities and other desired purposes is important for an inmate's rehabilitation and eventual reintegration into society.

D. Other Policies Regarding Inmate Communication

Inmates at the prison in the general population are not limited in the number of telephone calls they make each month, provided that a telephone is available and that each call does not exceed 15 minutes. An inmate may not make a long-distance call unless the recipient agrees to accept the charges for the call. Inmates with unrestricted visitation may have four, three-hour, face-to-face visits each week. Inmates are not provided free envelopes or postage for non-legal mail.

Inmates in disciplinary segregation are permitted one envelope and one first-class stamp each week at no charge to the inmate. They are allowed at most one 15-minute phone call each month. Visitation for inmates in disciplinary segregation occurs through a closed-circuit camera. Visits last for up to one hour and the number of visits permitted ranges from one to two every week.

OPINION

It is well-established that prisoners have a First Amendment right to communicate with those outside the prison, even for non-legal purposes. Thornburgh v. Abbott, 490 U.S. 401 (1989); Turner v. Safley, 482 U.S. 78 (1987); Procunier v. Martinez, 416 U.S. 396 (1974); Pell v. Procunier, 417 U.S. 817 (1974); Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). In this case, defendants have curtailed plaintiff's ability to communicate through the

mail by refusing to provide him with free postage for non-legal mail, prohibiting others from sending him stamps or embossed envelopes and refusing to allow persons outside the prison to send him funds specially designated for the purpose of purchasing postage and envelopes.

With respect to the policy of not providing inmates with any free stamps or envelopes, I recognize that in the past some prisons have given inmates limited free postage for personal mail. See, e.g., Gaines v. Lane, 790 F.2d 1299, 1308 (7th Cir. 1985) (upholding regulation that provided prisoners with free postage and envelopes for three first-class letters each week). Although there may be many reasonable arguments in favor of this practice, as I noted in the order granting leave to proceed, the Court of Appeals for the Seventh Circuit has held that there is generally "no constitutional right to subsidy." Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002). Thus, defendants' refusal to provide plaintiff with free postage does not violate the First Amendment. See Van Poyck v. Singletary, 106 F.3d 1558 (11th Cir. 1997) (indigent inmates do not have right to free postage for personal mail); Hershberger v. Scaletta, 33 F.3d 955, 956-57 (8th Cir. 1994) (same); Dawes v. Carpenter, 899 F. Supp. 892, 899 (N.D.N.Y. 1995) ("[T]he Constitution does not require the State to subsidize inmates to permit [personal] correspondence.").

The question is: if defendants choose not to provide plaintiff with postage, may they also prohibit others from purchasing postage for him when he does not have the means with which to pay for postage himself? Although defendants' policies do not expressly prohibit

speech, they implicate the First Amendment by making communication more difficult. See Morrison v. Hall, 261 F.3d 896 (9th Cir. 2001) (First Amendment implicated by prison regulation requiring mail to be sent by first or second-class postage).

Initially, defendants argue that no First Amendment interest is implicated because plaintiff *chose* to use what little funds he had for "fruitless litigation." Dfts.' Br., dkt. #8, at 9. (Defendants argue that plaintiff's litigation is "fruitless" because if it was not, "he would have been in a position to pay off his court filing fees and his legal loans with proceeds from successful litigation activities." Id. at 9 n.3.) If plaintiff has spent his limited funds irresponsibly, this would certainly provide defendants with justification for choosing not to provide him with free postage. However, as noted above, I concluded in the order granting plaintiff leave to proceed that defendants are not required to pay for postage for plaintiff's non-legal mail, *regardless* of the reason he is unable to pay for it himself. It does not follow, however, that defendants may arbitrarily cut off all other ways that plaintiff can communicate through the mail because he chose to litigate what he viewed as violations of his constitutional rights and to seek treatment for medical conditions. Even when prisoners have acted irresponsibly, they are entitled to some means of protecting their constitutional rights. See Lewis, 279 F.3d at 530-31 (in upholding "three strikes" provision under 28 U.S.C. § 1915, court noted that prisoners who have filed three frivolous suits still had many alternatives in obtaining access to courts, including "[b]orrowing the filing fee from friends

or relatives").

A conclusion that the First Amendment is implicated does not mean that the policies are unconstitutional. In Turner, the Court held that a prison regulation that impinges on a prisoner's constitutional rights must be reasonably related to penological interests. Turner, 482 U.S. at 89. The Court set forth four factors for courts to consider in evaluating whether this test is satisfied: (1) whether a valid, rational connection exists between the regulation and a legitimate governmental interest; (2) whether the prisoner has available alternative means of exercising the right in question; (3) whether accommodation of the asserted right will have negative effects on guards, inmates or prison resources; and (4) whether there are obvious, easy alternatives at a minimal cost.

With regard to the policy prohibiting stamps and embossed envelopes, defendants state that postage-paid envelopes from outside the prison create a security issue because they can contain visually undetectable amounts of drugs on the adhesive of both the stamps and the envelopes. Testing each envelope for the presence of drugs would be prohibitively expensive. Preventing the dissemination of drugs in the prison is a legitimate penological interest. Although defendants have not presented any evidence that there have been problems with importing drugs through envelopes, such evidence is not required. See Caldwell v. Miller, 790 F.2d 589, 599 (7th Cir. 1986) (defendants may show rational connection through affidavit of prison official who makes discretionary decisions regarding

security matters). I agree with defendants that prohibiting the receipt of stamps and embossed envelopes through the mail is a reasonable means of preventing inmates from obtaining drugs through the mail. Many courts have upheld similar restrictions on the receipt of stamps and envelopes from persons outside the prison. See Van Poyck, 106 F.3d at 1560; Kaestel v. Lockhart, 746 F.2d 1323, 1325 (8th Cir. 1984); Allen v. Wood, 970 F. Supp. 831 (E.D. Wash. 1997); Pacheco v. Comisse, 897 F. Supp. 671, 682 (N.D.N.Y. 1995).

This case differs from the ones cited above, however, because those cases did not involve situations in which the inmate was prevented both from receiving embossed envelopes *and* from receiving financial assistance from others in order to purchase stamps. Defendants do not deny that they could choose to allow friends or relatives to send money to plaintiff that is designated specially for the purchase of stamps or envelopes. This would provide an alternative to sending embossed envelopes through the mail that would not implicate security concerns. Defendants assert, however, that allowing such a practice would undermine the prison's rehabilitative goal of teaching plaintiff to "take responsibility for his debts and ai[d] him in developing money management skills that he will need to function successfully in the outside world. It is a truism that decisions made on spending and accumulating debt in the real world limit a person's subsequent spending." Dft.'s Br., dkt. #8, at 9-10 (citations omitted). It cannot be disputed that preparing inmates for the

responsibilities of non-prison society is a legitimate goal. See Pell, 417 U.S. at 823 ("[S]ince most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to custody.")

One could question whether it would hinder defendants' ability to teach plaintiff about financial responsibility to create a small exception to the rule, in which defendants would not deduct monetary gifts for mailing supplies. Although defendants are correct that plaintiff will have to make choices about spending in the "real world," it is also true that in the "real world," defendant will not be limited regarding whom he can visit and he will not be prohibited from receiving postage from friends and family if he cannot afford it. Furthermore, it would also be reasonable to argue that allowing inmates to maintain contact with their families is as important to an inmate's rehabilitation as insuring that they have paid all their debts.

However, a prison policy is not unconstitutional just because there may be reasons to question its wisdom. A court may "not substitute [its] judgment for [prison officials'] 'in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations.'" Caldwell, 790 F.2d at 596 (quoting Pell, 417 U.S. at 827). Plaintiff has not submitted any evidence to rebut defendants' rationale. Furthermore, if defendants were required to carve out an exception to the debt deduction policy, this would create additional administrative costs for prison staff. See O'Lone v.

Estate of Shabazz, 482 U.S. 342, 349 (1987) (in determining validity of regulation, court must consider impact of accommodation on prison personnel and allocation of prison resources).

Finally, as defendants point out, plaintiff retains other means of communicating with his family and others. He is permitted both visitation and telephone calls. Generally, when "alternative channels of communication are open to prison inmates" a "restriction on one manner in which prisoners can communicate with persons outside the prison" is not unconstitutional. Pell, 417 U.S. at 827-28. Plaintiff alleged in his complaint that he cannot speak on the telephone with some members of the family because they cannot or will not accept collect calls. (He did not make any allegations regarding the feasibility of visits.) Again, plaintiff has not proposed facts supporting this allegation. Even if it is true, however, it does not mean that other channels of communication are not "open" to plaintiff. Defendants are not responsible for insuring that plaintiff have contact with persons outside the prison; they are prohibited only from barring all forms of communication. Thus, although I sympathize with plaintiff's frustration regarding the difficulty he has had communicating with his family, I cannot conclude that the prison's policies violate the First

Amendment. Defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants' Jon Litscher, Cindy O'Donnell, Steven Casperson, John Ray, Daniel Bertrand, Francis Lardinois and Wendy Bruns is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 14th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge