IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

SEER MAGI,

Plaintiff,

OPINION AND ORDER
00-C-479-C

v.

TOMMY THOMPSON, Governor of Wisconsin;
GARY HAMBLIN, Sheriff of Dane County;
DEPUTY PICKER, Dane County Jail;
DEPUTY WAGNER, Dane County Jail;
SGT. SAMPSON, Dane County Jail;
LT. LETZLAFF, Dane County Jail; and
CARRIE ANN DOE, Dane County Jail,
Defendants.

- -

This is a proposed civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff Seer Magi, who is presently confined at the Dane County jail in Madison, Wisconsin, contends that defendants violated his rights by denying him due process, subjecting him to unconstitutional conditions of confinement, failing to protect him from another inmate, violating his right to privacy, interfering with his right to access the courts and denying him his right to the newspaper. Plaintiff has paid the full fee for filing his complaint. Subject matter jurisdiction is present. See 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). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has on three or more previous occasions had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or to dismiss the case sua sponte regardless whether plaintiff has paid the filing fee if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. See 28 U.S.C. § 1915A. In addition, under most circumstances, a prisoner's complaint must be dismissed if the prisoner has failed to exhaust available administrative remedies.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Due Process Claims

When plaintiff was arrested on June 14, 2000, he was placed in "the hole", kept there for two days and told he could get out when he stopped causing trouble. On June 20, 2000, plaintiff had a seizure and was placed in the hole without written notice, reasons or a hearing. Defendant Wagner told plaintiff that he was being moved for medical observation because the

hole has a camera.

The jail's grievance procedure does not attempt to resolve grievances. On June 20 and June 22, 2000, plaintiff filed three complaints. In response, defendant Letzlaff stated that plaintiff's complaints did not meet the requirements of a properly filed grievance.

On June 27, 2000, plaintiff was transferred to Mendota Mental Health Institute for a competency evaluation. After plaintiff returned from Mendota on July 12, 2000, defendant Picker refused to return plaintiff's personal property, including his legal papers. When returning from Mendota on July 14, 2000, inmate Kevin McCreary had his property returned to him that same day.

On July 13, 2000, defendant Picker lied to plaintiff. The next day, plaintiff called defendant Picker, "deputy slick," defendant Picker punished plaintiff by not allowing him an hour out of his cell or a shower.

B. Conditions of Confinement Claims

1. Food

Plaintiff is a vegetarian but he has been told, "We don't cater to vegetarians. Eat what you want and push the meat aside." Usually, his bread is placed on top of the meat or the meat is placed on top of some other food.

2. Cell

a. Bed

The jail cells have a steel bed or a concrete slab bed, with a one-inch thick mattress. It is painful for plaintiff to sleep on this type of bed because he is so thin. Plaintiff's cell does not have a table or chair.

b. Light

While plaintiff was in the hole, a bright light was on 24 hours a day. In other cells, the light is on the back wall over six feet from the floor and recessed into the wall. It shines across the top of the cell but not onto the bed where plaintiff does his writing. This inadequate lighting puts a tremendous strain on plaintiff's eyes.

c. Cold

The temperature in plaintiff's cell was about 45 degrees and plaintiff was given a very thin blanket.

d. Hygiene

In plaintiff's cell, he has a small porcelain sink that takes about an hour to drain and

leaves a dark film on the bottom. Plaintiff does not have a mirror in his cell for personal grooming and was not allowed to have soap or any personal grooming items. When he used toilet paper to block the air conditioning vent because it was so cold, unnamed guards took away his toilet paper.

3. Unit

The unit where plaintiff's cell is located is filthy; it has a build-up of "crud" around the walls and in every crevice. The walls in the unit look as though they were painted in the 1980s and the showers have rust in them.

Because plaintiff is a pretrial detainee, he should be housed with other pretrial detainees only, not with convicted felons.

C. Failure to Protect Claim

On July 15, 2000, defendant Picker opened the cell door next to plaintiff to allow another inmate out for an hour of exercise. With defendant Picker beside him, the inmate went to plaintiff's cell door and began calling plaintiff names. Defendant Picker stood by as the inmate spat on plaintiff through the bars, called him names and spat on him a second time. At that point, defendant Picker moved the inmate away.

D Access to the Court Claims

Plaintiff has been denied access to the law library even though it is across the street from the jail. Also, he has been denied a notary service, legal supplies, his legal work and a typewriter or a word processor.

Defendants have denied plaintiff his one hour outside his cell. During this hour, plaintiff must make phone calls to his lawyer and family, sweep and mop his cell and shower. Each phone call costs $5.00 plus $0.69 per minute, making it impossible for plaintiff to talk to his lawyer on the phone.

E. Privacy Claim

Within plaintiff's first week in the jail, defendant Picker let him out of his cell for his hour of exercise and a shower. When plaintiff exited the shower, defendant Picker watched him through the guard office window. When plaintiff noticed defendant Picker watching him, defendant Picker looked down at plaintiff's penis and licked his lips and then looked back up at plaintiff's face and smiled. Later that day, defendant Picker whispered to plaintiff that he liked plaintiff's penis and would love to "have it in [his] mouth." When plaintiff responded that he is heterosexual, defendant Picker became angry and told him that if he was in jail long enough, defendant Picker would find a way to have an inmate kill him.

F. First Amendment Claim

Jail guards remove newspaper articles from the newspapers in the jail that discuss the Dane County jail or any of the inmates of the jail.

F. Miscellaneous Claims

When plaintiff washes his underwear, the only place to hang it to dry is on the cell bars. Defendants Picker and Ninneman have told plaintiff that it is against the rules to hang underwear on the bars. The canteen prices are high. Plaintiff is not allowed to watch television; two other inmates in his unit are allowed to watch television.

OPINION

A. Due Process Claims

Plaintiff alleges that his rights under the due process clause of the Fourteenth Amendment have been violated by defendants' failure to provide him with any process before placing him in the hole, refusing him an hour out of his cell or a shower after he called defendant Picker a name, rejecting his grievance and depriving him of personal property.

Prison administrators are "free, within appropriate limits, to sanction the prison's pretrial detainees for infractions of reasonable prison regulations that address concerns of safety and

security within the detention environment." Rapier v. Harris, 172 F.3d 999, 1004 (7th Cir. 1999) (quoting Collazo-Leon v. United States Bureau of Prisons, 51 F.3d 315, 318 (1st Cir. 1995)). However, the Court of Appeals for the Seventh Circuit has not "directly decided whether a pretrial detainee has the right to procedural due process in connection with a punishment for disciplinary infractions." Rapier, 172 F.3d at 1004. Compare Whitford v. Boglino, 63 F.3d 527, 531 n.4 (7th Cir. 1995) ("Sandin [v. Conner, 515 U.S. 472 (1995)] does not apply to pretrial detainees, who may not be punished without due process of law regardless of state regulations.") with Zarnes v. Rhodes, 64 F.3d 285, 291 & n.5 (7th Cir. 1995) (holding that segregation of detainee without a hearing did not violate due process if done for legitimate security reasons and declining to hold that every placement in administrative segregation of pretrial detainee constitutes punishment). I need not decide whether plaintiff was entitled to a hearing before being subjected to segregation or deprived of his hour out of his cell because 28 U.S.C. § 1997e(a) mandates that "no action shall be brought" by a prisoner under any federal law until the prisoner has exhausted all "administrative remedies as are available." The Seventh Circuit has held that "a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits." Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999); see also Massey v. Helman, 196 F.3d 727 (7th Cir. 1999). Because plaintiff never raised this

claim within the jail's inmate grievance system, he has failed to exhaust available administrative remedies with regard to it and his claim cannot be heard in federal court.

Plaintiff alleges that defendants deprived him of his personal property. However, as long as state remedies are available for the loss of property, neither intentional nor negligent deprivation of property gives rise to a constitutional violation. See Daniels v. Williams, 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517 (1984). In Hudson, the United States Supreme Court held that an inmate has no due process claim for the intentional deprivation of property if the state has made available to him a suitable post-deprivation remedy. In Daniels, the Court concluded that a due process claim does not arise from a state official's negligent act that causes unintended loss of property or injury to property.

The state of Wisconsin provides several post-deprivation procedures for challenging the taking of property. According to Article I, §9 of the Wisconsin Constitution,

> Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without delay, conformably to the laws.

Sections 810 and 893 of the Wisconsin Statutes provide plaintiff with replevin and tort remedies. Section 810.01 provides a remedy for the retrieval of wrongfully taken or detained property. Section 893 contains provisions concerning tort actions to recover damages for wrongfully taken or detained personal property and for the recovery of the property. Plaintiff

has not alleged that the state has refused to provide him with a post-deprivation remedy. The existence of these remedies defeats any claim he might have that defendants deprived him of his property without due process of law.

Plaintiff also alleges that defendant Letzlaff rejected his internal grievances because of plaintiff's failure to meet the procedural requirements of the grievance system. Plaintiff does not contend that he properly followed the jail's inmate complaint system or that the procedures were applied to him unfairly. He has failed to state a viable claim of due process violations under the Fourteenth Amendment.

B. Conditions of Confinement Claims

The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon jail officials the duty to "provide humane conditions of confinement" for prisoners. Farmer v. Brennan, 511 U.S. 825, 832 (1994). Because plaintiff is a pretrial detainee at the Dane County jail, his claims are controlled by the Fourteenth Amendment, rather than the Eighth Amendment, which is applicable only to inmates serving sentences pursuant to a criminal conviction. See Bell v. Wolfish, 441 U.S. 520, 536 (1979); Estate of Cole v. Fromm, 94 F.3d 254, 258-59 (7th Cir. 1996). A pretrial detainee's constitutional rights are distinct from those of a prisoner because the state cannot punish a pretrial detainee. See Bell, 441 U.S.

at 535 & n.16; Collignon v. Milwaukee County, 163 F.3d 982, 987 (7th Cir. 1998) (stating protections extended to pretrial detainees under the due process clause are at least as extensive as the protections against cruel and unusual punishment extended to prisoners by the Eighth Amendment). This duty includes the obligation to "ensure that inmates receive adequate food, clothing, shelter, protection, and medical care." Oliver v. Deen, 77 F.3d 156, 159 (7th Cir. 1996).

The conditions of a prisoner's confinement are actionable only if the plaintiff shows that the conduct of the prison officials satisfies a test that involves both an objective and subjective analysis. See Farmer, 511 U.S. at 834. The objective component focuses on whether the conditions "exceeded contemporary bounds of decency of a mature, civilized society." Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994) (citing Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992)). Not all restrictive or even harsh prison conditions are actionable under the Eighth Amendment. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Deprivations must be "unquestioned and serious" and contrary to "the minimal civilized measure of life's necessities." Id.

The subjective component focuses on intent: "whether the prison officials acted wantonly and with a sufficiently culpable state of mind." Lunsford, 17 F.3d at 1579. In prison conditions cases, the requisite "state of mind is one of 'deliberate indifference' to inmate health

or safety." Farmer, 511 U.S. at 834. A prison official is deliberately indifferent when he "knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. To raise an Eighth Amendment claim, "'[t]he infliction [of punishment] must be deliberate or otherwise reckless in the criminal law sense, which means that the [defendant] must have committed an act so dangerous that his knowledge of the risk can be inferred or that the [defendant] actually knew of an impending harm easily preventable." Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Antonelli v. Sheahan, 81 F.3d 1422, 1427 (7th Cir. 1996)). The deliberate indifference test is the same under the Eighth and Fourteenth Amendments. See Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir. 1997) (citing Salazar v. City of Chicago, 940 F.2d 233, 240-241 (7th Cir. 1991)). "A detainee establishes a § 1983 claim by demonstrating that the defendants were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger." Payne v. Churchich, 161 F.3d 1030, 1041 (7th Cir. 1998).

1. Food

Plaintiff alleges that he has been refused wholly vegetarian meals but he provides no

facts to suggest that the meals he was given were so nutritionally inadequate after he eliminated the meat portion as to threaten his health. "'A well-balanced meal, containing sufficient nutritional value to preserve health, is all that is required.'" Lunsford, 17 F.3d 1574 (citations omitted). Under the Eighth Amendment, prisoners are entitled to "'nutritionally adequate food that is prepared and served under conditions that do not present an immediate danger to the health and well being of the inmates who consume it.'" French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985) (quoting Ramos v. Lamm, 639 F.2d 559, 570-71 (10th Cir. 1980)). Plaintiff does not allege that he ever became ill after consuming food at Dane County jail, that the conditions under which it was served were unsanitary or that he has religious beliefs that preclude him from eating meat. Because plaintiff's allegation that he is being served meat along with vegetarian dishes fails to point to any specific problems cognizable under the Eighth Amendment, he fails to state a claim upon which relief can be granted.

2. Cell

Plaintiff's allegations that the beds in the jail are steel or concrete with thin mattresses, that the cells lack tables and chairs and that the lighting in his cell is inadequate do not suggest that he was confined to a cell that violated "contemporary standards of decency." See Caldwell v. Miller, 790 F.2d 589, 600 (7th Cir. 1986). Similarly, plaintiff's allegations that his unit was

filthy and housed both pretrial detainees and prisoners are also insufficient to establish an Eighth Amendment violation. That there is "crud around the walls," old paint on the walls and rust in the showers falls short of establishing that plaintiff was subjected to unconstitutional conditions of confinement.

Plaintiff contends that the presence of light in the segregation cell area at all times violates his right to be free from cruel and unusual punishment protected by the Eighth Amendment. The presence of light at all times in the segregation cell is not an "excessive risk to inmate health and safety." See Farmer, 511 U.S. at 837. It cannot be considered "reckless in the criminal law sense." See Snipes, 95 F.3d at 590. Rather, it is the type of security decision that prison officials are free to make, unfettered by the federal courts. See Bell, 441 U.S. at 547 (holding that prison officials are free to make decisions that "in their judgment are needed to preserve internal order and discipline and to maintain institutional security). Accordingly, plaintiff has failed to state a claim upon which relief may be granted.

Plaintiff also contends that defendants violated his rights by subjecting him to extreme cold in his cell. The Eighth Amendment imposes a duty on prison officials to provide adequate shelter, although conditions may be harsh and uncomfortable. See Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997). This includes a right to protection from extreme cold. See id. (holding that cell so cold that ice formed on walls and stayed throughout winter every winter

might violate Eighth Amendment). "[C]ourts should examine several factors in assessing claims based on low cell temperature, such as the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold." Id. at 644. See Wilson v. Seiter, 501 U.S. 294, 304 (1991) (holding that conditions must "have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise--for example, a low cell temperature at night combined with a failure to issue blankets"). "Cold temperatures need not imminently threaten inmates' health to violate the Eighth Amendment." Dixon, 114 F.3d at 644. Regardless of the merits of plaintiff's claim, he has failed to exhaust available administrative remedies on this claim and, as a result, his claim cannot be heard in federal court.

3. Hygiene

Plaintiff does not contend that he was denied access to showers; in fact, he admits that he was allowed to shower during his one hour out of his cell each day. The Seventh Circuit has held that one shower a week for inmates confined in segregation is constitutionally sufficient. See Davenport v. DeRobertis, 844 F.2d 1310, 1316-17 (7th Cir. 1988). Plaintiff admits that there was a sink in his cell, albeit one that was slow to drain. Even if plaintiff was denied

personal grooming items, he was not deprived of the ability to clean himself in light of the fact that he had access to a shower and a sink. And, defendants did not deprive plaintiff of toilet paper regularly; they took away his toilet paper only on the occasions that he used it to block the air conditioning vent. Although the jail was obligated to provide plaintiff "with materials sufficient to meet his basic levels of sanitation and hygiene," plaintiff does not have a right to unlimited access to products such as soap and he certainly does not have a right to amenities such as a mirror. Sanders v. Sheahan, 198 F.3d 626, 628 (7th Cir. 1999).

4. Miscellaneous claims

Plaintiff's allegations about the prices in the canteen, the lack of a place to dry his underwear and his inability to watch television fail to state a viable claim under § 1983. Because none of these claims constitute "punishment," they will be dismissed. See Bell, 441 U.S. 520.

C. Failure to Protect Claim

The Eighth Amendment, as applied against state officials through the Fourteenth Amendment, gives prisoners a right to remain safe from assaults by other inmates. See Langston v. Peters, 100 F.3d 1235, 1237 (7th Cir. 1996). "'[P]rison officials have a duty. . .

to protect prisoners from violence at the hands of other prisoners.'" Farmer, 511 U.S. 825. "Having incarcerated 'persons [with] demonstrated proclivit[ies] for antisocial criminal, and often violent, conduct,' see Hudson, 468 U.S. at 526, having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course." Farmer, 511 U.S. at 833.

In a failure to protect case, "[t]he inmate must prove a sufficiently serious deprivation, i.e., conditions which objectively 'pos[e] a substantial risk of serious harm.'" Pope v. Shafer, 86 F.3d 90, 92 (7th Cir. 1996). The inmate must also prove that the prison official acted with deliberate indifference to the inmate's safety, "effectively condon[ing] the attack by allowing it to happen." Langston, 100 F.3d at 1237 (quoting Haley v. Gross, 86 F.3d 630, 640 (7th Cir. 1996)). A prison official may be liable for knowing that there was a substantial likelihood that the prisoner would be assaulted and failing to take reasonable protective measures. See Farmer, 511 U.S. at 847. The prison official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and the official must draw that inference. See Pavlick v. Mifflin, 90 F.3d 205, 207-08 (7th Cir. 1996). The prisoner does not have to show that the prison official intended that the prisoner be harmed; it is enough that the official ignored a known risk to the prisoner's safety. See id. at 208. In failure to protect cases, "[a] prisoner normally proves actual knowledge of impending harm by showing that he complained

to prison officials about a specific threat to his safety." McGill v. Duckworth, 944 F.3d 344, 349 (7th Cir. 1991).

Plaintiff contends that defendant Picker failed to prevent another inmate from spitting on him twice. Plaintiff has failed to allege that defendant Picker knew that there was a substantial likelihood that the inmate in the cell next to plaintiff would spit on plaintiff as soon as the inmate was taken out of his cell. Plaintiff alleges that defendant Picker moved the inmate within moments of seeing what the inmate was doing. As a result, plaintiff's claim that defendant Picker was deliberately indifferent to plaintiff's serious safety needs fails to state a claim upon which relief may be granted.

D Access to the Court Claims

I understand plaintiff to be alleging that defendants have impeded his constitutional right of access to the courts by denying him access to the library, a telephone, a notary service, legal supplies, his legal work and a typewriter or a word processor and by charging high fees for telephone calls. It is well established that inmates have a fundamental constitutional right of access to the courts. See Bounds v. Smith, 430 U.S. 817, 821 (1977). To state a claim, the prisoner must allege facts from which an inference can be drawn of "actual injury." See Lewis v. Casey, 518 U.S. 343, 349 (1996). This rule is derived from the doctrine of standing, see id.,

and requires the prisoner to demonstrate that a non-frivolous legal claim has been frustrated or impeded. See id. at 353-54 nn. 3-4 and related text. In light of Lewis, a plaintiff must plead at least general factual allegations of injury resulting from defendants' conduct or suffer dismissal of his complaint for failure to state a claim upon which relief may be granted.

Although it is clear that inmates have the right to meaningful access to the courts, see Lewis, 518 U.S. at 349, this access is satisfied if the prison provides basic materials, such as ink pens and paper, for the preparation of legal materials. For instance, access to the courts does not include a federally protected right to use a typewriter. See, e.g., Jackson v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989); Sands v. Lewis, 886 F.2d 1166, 1172 (9th Cir. 1989); American Inmate Paralegal Ass'n v. Cline, 859 F.2d 59, 61 (8th Cir. 1988); Twyman v. Crisp, 584 F.2d 352, 358 (10th Cir. 1978); Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), *rev'd on other grounds*, 441 U.S. 520 (1979); Inmates, Washington County Jail v. England, 516 F. Supp. 132, 140 (E.D. Tenn. 1980), *aff'd without opinion*, 659 F.2d 1081 (6th Cir. 1981). Inmates are not prejudiced by the filing of handwritten documents. See, e.g., Twyman, 584 F.2d at 357 (per curiam); Tarlton v. Henderson, 467 F.2d 200 (5th Cir. 1972). Plaintiff has not alleged that he was denied any of the basic materials required to assure constitutionally adequate access to the courts.

Plaintiff's claim that defendants' refusal to allow him access to the law library “right

across the street" violates his constitutional rights fails to state a claim for two reasons. The Constitution does not guarantee incarcerated plaintiffs the right to come and go from a public library, no matter how close the library may be. In addition, plaintiff fails to state a claim under Lewis, 518 U.S. at 322, because he has failed to present any evidence of actual injury. Although prisoners are entitled to "'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts,'" they do not have an unrestricted right of access to law libraries and legal materials. Id. at 351 (quoting Bounds, 430 U.S. at 825); see also Wallace v. Robinson, 940 F.2d 243, 248 (7th Cir.1991) (en banc) (prisoners do not have a right to unlimited access to the law library).

Plaintiff also contends that prison officials interfered with his ability to have telephone conversations with his lawyers by refusing to allow him out of his cell on occasion and by charging high fees for the phone calls. Again, plaintiff has failed to allege any resulting injury. See, e.g., Jones v. Franzen, 697 F.2d 801, 803 (7th Cir. 1983) ("The reasonableness of a prison's photocopy policy becomes relevant only after the prisoner has shown that the policy is impeding [his right of access to the courts]".). None of plaintiff's allegations support an inference that he was prejudiced because of the actions of jail staff, including defendants' denial of a notary service; he fails to identify a case in which his ability to defend or prosecute a claim was affected by jail staff's alleged obstruction of his access to the courts. Plaintiff fails to state

a claim upon which relief may be granted.

E. Privacy Claim

Plaintiff contends that defendant Picker is liable under § 1983 because he violated plaintiff's rights by watching him when he was naked following a shower. That plaintiff may have been observed by a guard does not state a violation under the Fourth or Eighth Amendment. The Seventh Circuit has held that a guard's monitoring of a naked inmate neither violates the inmate's right of privacy nor constitutes cruel and unusual punishment, as long as the monitoring policy was not adopted to embarrass or humiliate the inmate. See Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995). Although plaintiff's allegations of defendant Picker's behavior reveal crude behavior, I am aware of no provision in the Constitution that gives a person a right not to be subjected to crude behavior from others that does not amount to the infliction of punishment.

E. First Amendment Claim

Plaintiff contends that it violates his First Amendment rights for the jail guards to remove certain articles from the jail's newspapers. Prison actions that affect an inmate's receipt of non-legal mail must be "reasonably related to legitimate penological interests." Thornburgh

v. Abbott, 490 U.S. 401, 409 (1989); see also Turner v. Safley, 482 U.S. 78, 89-90 (1987) (setting forth four factor test); Bell, 441 U.S. 520. Because plaintiff never raised this claim within the jail's inmate grievance system, he has failed to exhaust available administrative remedies with regard to it and his claim cannot be heard in federal court.

ORDER

IT IS ORDERED that

1. Plaintiff Magi Seer's claims that he was denied due process before being subjected to discipline, subjected to extreme cold in his cell and denied access to newspaper articles are DISMISSED for his failure to exhaust his administrative remedies. Plaintiff's remaining claims are DISMISSED pursuant to 28 U.S.C. § 1915A for his failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(g) directs the court to enter a strike when an "action" is dismissed "on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . ." Because at least one of plaintiff's claims is dismissed for failure to exhaust his administrative remedies and failure to exhaust is not one of the enumerated grounds, a strike will not be recorded against plaintiff under § 1915(g).

2. The clerk of court is directed to close the file.

Entered this 9th day of August, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge