

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

HARRISON FRANKLIN,

Plaintiff,

v.

GARY R. McCAUGHTRY, Warden of
Waupun Correctional Institution, PAULINE
BELGGADO, Doctor of Waupun
Correctional Inst., HSU, BETH DITHMANN,
SGT. SIEDOSCHLAG and JIM WEGNER,

Defendants.

ORDER

00-C-157-C

In an order entered November 17, 2000, I allowed plaintiff Harrison Franklin to amend his complaint and granted him leave to proceed in forma pauperis against defendants Gary R. McCaughtry, Pauline Belggado, Beth Dithmann, Sgt. Siedoschlag and Jim Wegner, on his claim that he received inadequate medical care in violation of the Eighth Amendment. Plaintiff has filed a motion for an order requiring defendants to provide plaintiff with Shepardized legal material, stop interfering with plaintiff's outgoing and ingoing mail, transfer plaintiff to a different institution that may be able to provide his first two requests, stop retaliating against

plaintiff for filing this action and give plaintiff access to his files on a regular basis. Plaintiff has filed a supporting affidavit in which he swears that his outgoing and incoming mail has been interfered with and that Supermax Correctional Institution does not provide Shepardized material. He swears that he has no violence on his institution record and that his placement at Supermax is unwarranted; plaintiff believes that he was transferred to Supermax in retaliation for filing this lawsuit. Plaintiff contends that his placement at Waupun Correctional Institution would allow him access to witnesses for this case.

In situations in which a plaintiff alleges that prison officials are retaliating against him for initiating a lawsuit, it is the policy of this court to require the claim to be presented in a lawsuit separate from the one which is alleged to have provoked the retaliation. This is to avoid the complication of issues that can result from an accumulation of claims in one action. Similarly, to the extent such claims are separate from the alleged retaliation, plaintiff must bring in a separate lawsuit his claim that prison officials are interfering in his litigation of this case by failing to provide Shepardized legal material and by interfering with his outgoing and incoming mail.

The court recognizes an exception to this policy only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his petition. Plaintiff has not suggested that he is being physically prevented from litigating this case.

Plaintiff's only description of how defendants are interfering with his mail is the statement, "I have received no explanation for the constant delays in receiving my mail or sending my mail." Any delays in mail delivery to and from plaintiff have not impaired his ability to litigate this case. Plaintiff asked for and was granted an extension of time to amend his complaint and he was granted leave to proceed on the amended complaint. In an order entered December 11, 2000, I ruled on five different motions and requests filed by plaintiff. The court receives mail regularly from plaintiff, who is actively prosecuting this case.

The court will not order defendants to give plaintiff access to his files because such an order is unnecessary at this time. Plaintiff does not allege that he has requested production of his files pursuant to Fed. R. Civ. P. 34 and that defendants have refused his request. If such were the case, plaintiff could ask this court for an order to compel defendants to comply with his request. A copy of Rule 34 is enclosed to plaintiff with this order. Rule 34 allows plaintiff to request that defendants produce and permit plaintiff to copy his files by specifying the files and a reasonable, time, place and manner of making the inspection.

ORDER

IT IS ORDERED that plaintiff Harrison Franklin's motion for an order compelling defendants to provide plaintiff with Shepardized legal material, stop interfering with plaintiff's

mail, transfer plaintiff to a different institution, stop retaliating against plaintiff and give plaintiff access to his files is DENIED.

Entered this 19th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge