IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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FRANCIS E. ALTMAN,

Plaintiff,

v.

ROBERT DICKMAN, MICHAEL SCHAEFER, KARA MOHR and CARY PELLOWSKI,

Defendants.

OPINION AND ORDER

03-C-371-C

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This is a civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Plaintiff Francis E. Altman alleges that defendants Robert Dickman, Michael Schaefer, Kara Mohr and Cary Pellowski violated his First Amendment right to send and receive mail at the Marathon County jail and retaliated against him by refusing to allow him to send a letter to a friend after he had filed a grievance regarding the jail's mail restrictions. Jurisdiction is present under 28 U.S.C. § 1331.

Presently before the court is defendants' motion for summary judgment on all of plaintiff's claims against them. Plaintiff has not opposed the motion, despite knowing the importance of doing so as explained in the preliminary pretrial conference order dated

October 2, 2003 and this court's Procedures to be Followed on Motions for Summary Judgment, a copy of which was sent to the parties with the order. Therefore, in deciding the motion, I must find defendants' proposed facts to be undisputed.

Defendants argue that their incoming mail rule requiring a complete name and return address does not violate plaintiff's First Amendment rights. I conclude that defendants' rule helps insure compliance with court-ordered "no-contact" conditions, promotes jail security and assists jail staff in investigations. Therefore, it is reasonably related to a legitimate penological interest and does not violate plaintiff's First Amendment rights. In addition, I conclude that plaintiff has failed to exhaust his administrative remedies with regard to his complaints about outgoing mail and retaliation. Therefore, I will grant defendants' motion for summary judgment.

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

UNDISPUTED FACTS

A. The Parties

Plaintiff Francis E. Altman is incarcerated at the Redgranite Correctional Institution in Redgranite, Wisconsin. At the time of this dispute, plaintiff was a pretrial detainee in the Marathon County jail in Wausau, Wisconsin with nine pending felony drug offense charges.

Defendant Robert Dickman is Administrator of the Marathon County jail. He is responsible for supervising all corrections officers and supervisors and has knowledge of jail rules and the requirements of the Department of Corrections and the Federal Bureau of Prisons. Defendants Cary Pellowski and Michael Schaefer are corrections supervisors at the Marathon County jail. In addition to having other responsibilities, they insure staffing of the Rover Mail Position. Defendant Kara Mohr is a corrections officer at the Marathon County jail. In addition to having other responsibilities, she is responsible for staffing the Rover Mail Position once or twice during each two-week period on non-consecutive shifts.

B. Incoming Mail

On June 12, 2003, plaintiff received a property denial form stating that a letter addressed to him had been received at the jail but would not be given to him because it had no sender name or return address. According to the form, defendant Mohr had placed the letter in plaintiff's property bag. On June 13, 2003, plaintiff sent jail staff an inmate request form and property release form along with an envelope addressed to Rick Kent. It was plaintiff's intent that jail staff would put the withheld letter in the envelope addressed to Kent so that Kent could inform plaintiff who had sent the withheld letter. Defendant Pellowski returned the inmate request form to plaintiff with the written notation, "you will receive upon release."

On June 17, 2003, plaintiff sent an inmate grievance form to defendant Dickman complaining about defendant Pellowski's response. On June 18, 2003, defendant Schaefer responded to the grievance stating, "This letter was not sent through the mail, it was dropped off in a box outside Huber." From this information, plaintiff deduced that the withheld letter was from his "lady friend," Cheryl Davis, who was incarcerated in the Federal Prison System at Danbury Connecticut.

C. Outgoing Mail

On June 19, 2003, plaintiff wrote to Davis, placing the letter in an envelope addressed to Kent. On June 20, 2003, the letter and envelope were returned to plaintiff with an unsigned note stating, "We need an address to the party you are writing to." On July 7, 2003, plaintiff successfully mailed the same letter to Davis in an envelope addressed to Kent. Plaintiff sent letters to Davis in envelopes addressed to Kent rather than in envelopes addressed to her directly because he wanted to make sure that jailers at the Marathon County jail did not fail to mail the plaintiff's personal mail. By sending his friend's mail to Rick Kent, plaintiff can verify that it was actually mailed. Because the friend is in a federal prison, plaintiff cannot call her to verify whether she received his letter. The jail's mail logs show that plaintiff sent out a total of 24 letters addressed to Kent and 3 letters addressed directly to Davis.

Plaintiff did not file a grievance, complaint or request at any time with the jail regarding either the June 19, 2003 letter to Davis or his claim that defendants returned the letter to him in retaliation for previous grievances filed. Under the Marathon County Jail Inmate Complaint Policy, Procedure and Appeal, plaintiff could have provided written notification of a grievance, complaint or request to a corrections supervisor and could have appealed the supervisor's response to the jail administrator.

D. Rules and Procedures

The Marathon County jail rules applicable to incoming and outgoing mail and telephone privileges provide in § V.B.3 that all "incoming mail must include complete return addresses with sender's name or it will be placed in the inmate's property bag and remain there until the inmate is released." Under the rule relating to telephone privileges, inmates may use the telephone after booking is complete and at the discretion of the correctional staff. Personal phone calls may be made daily from the cell block dayroom areas. Calls are operator-assisted collect calls that will cost the person being called a regulated taxable fee.

OPINION

A. Incoming Mail

The first question this case raises is whether defendants violated plaintiff's First Amendment rights when they refused to deliver mail to him that did not have a name and return address. Prisoners have a limited liberty interest in their mail under the First Amendment, Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987), that may be regulated or restricted through regulations reasonably related to a legitimate penological interest. Thornburgh, 490 U.S. at 404 (citing Turner v. Safley, 482 U.S. 78, 89 (1987)).

To determine whether a prison rule or regulation is overly restrictive so as to infringe an inmate's First Amendment rights, the court must consider four factors: 1) whether a valid, rational connection exists between the regulation and a legitimate governmental interest, such as jail security; 2) whether the prisoner has available to him 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 to the regulation. Turner, 482 U.S. at 89-91. "The Court adopted a reasonableness standard, as opposed to a heightened scrutiny, to permit prison administrators 'to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration' and thereby prevent unnecessary federal court involvement in the administration of prisons." Al-Alamin v. Gramley, 926 F.2d 680, 685 (7th Cir. 1991); see also Young v. Lane, 922 F.2d 370, 375 (7th Cir. 1991) ("The standard

set out in Turner is not demanding . . . and is driven by a wide-ranging deference to prison officials, especially state prison officials."). Legitimate practices include inspection of inmate mail for contraband, escape plans or other threats to prison security. Gaines v. Lane, 790 F.2d 1299, 1304 (7th Cir. 1986); see also Royse v. The Superior Court of the State of Washington, 779 F.2d 573, 575 (9th Cir. 1986) (inspection of inmate mail for contraband does not constitute mail censorship).

Defendants contend that the return address requirement advances certain legitimate penological goals. These goals include:

> 1) compliance with court-ordered pre-trial and pre-sentence "no-contact" conditions of incarceration. Most jail inmates in the Marathon County Jail are held pre-trial or post-conviction and are subject to specific restrictions imposed by the court as conditions of bond; most frequently, these restrictions include "no contact" provisions which generally apply to co-defendants, victims and witnesses; and
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> 2) maintaining jail security by assisting in the investigation of the sources of inmate mail. This prevents inmates from exchanging contraband with other inmates in the jail or with those on the outside through the mail, including illegal substances and escape plans and prevents gang activity between gang members incarcerated in the same jail.

Dfts.' PFOF, dkt. # 25, at 12. Defendants point to a recent case from the Court of Appeals for the Ninth Circuit, holding that requiring a complete name and return address serves a legitimate penological interest because "a return address is an invaluable and necessary tool in gathering intelligence and conducting investigations." Morrison v. Hall, 261 F.3d 896,

907 (9th Cir. 2001). Like the Ninth Circuit, I conclude that defendants' rule requiring a complete name and return address on incoming mail serves a legitimate penological interest. Therefore, rule V.B.3 meets the first prong of the Turner test. The regulation has a valid, rational connection to a legitimate governmental interest.

The rule meets the remaining prongs of the Turner test as well. Prong two is satisfied because plaintiff is free to write and receive letters so long as he and his correspondents comply with the jail's rule on addresses and he has available to him other alternative means of exercising his First Amendment rights, such as using the telephone. Prong three is satisfied because accommodating plaintiff's request to receive anonymous incoming mail would undermine the jail's ability to comply with court-ordered "no-contact" conditions, jail security and investigations. Finally, plaintiff has not pointed to an alternative to the rule that would fully accommodate his rights at a minimal cost to valid penological interests. I conclude that the jail's rule requiring incoming mail to have a complete name and return address does not violate plaintiff's First Amendment rights.

Plaintiff argues in addition that forbidding him to forward incoming mail that comes to the jail for him without a complete name and return address is a separate violation of the First Amendment. Because I have determined that defendants' incoming mail rule does not violate plaintiff's First Amendment rights, it follows that forbidding an inmate to forward mail sent to him without a complete name and return address is not a First Amendment

violation. Allowing prisoners to receive mail without a complete name and return address would undermine the purpose of rule V.B.3, which is to comply with court-ordered "no contact" conditions," maintain jail security and conduct investigations. Defendants are entitled to summary judgment on plaintiff's First Amendment claim regarding jail rule V.B.3.

B. Outgoing Mail and Retaliation

Plaintiff alleges that defendants violated his First Amendment rights when they refused to send his June 19, 2003 letter to Davis via Kent. In addition, he alleges that defendants retaliated against him for filing grievances by returning the June 19, 2003 letter to him, even though defendants had mailed letters to Davis via Kent before. It is undisputed, however, that plaintiff never filed a grievance or complaint on either the jail's requirement that outgoing mail be addressed to the same person to whom the letter is written or his retaliation claim. It is undisputed also that the jail had grievance procedures available, which plaintiff had used previously regarding his incoming mail complaint. Defendants argue that the court should dismiss plaintiff's claims about outgoing mail and retaliation for his failure to exhaust his administrative remedies.

The exhaustion provisions of the 1996 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), state that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison,

or other correctional facility until such administrative remedies as are available are exhausted." The phrase "'civil action with respect to prison conditions' means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. § 362(g)(2).

The Court of Appeals for 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, 733 (7th Cir. 1999). The court of appeals has held also that "if a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim. The potential effectiveness of an administrative response bears no relationship to the statutory requirement that prisoners first attempt to obtain relief through administrative procedures." Massey, 196 F.3d at 733.

Because plaintiff failed to exhaust his administrative remedies as to his First Amendment retaliation and outgoing mail claims, I will grant defendants' motion for summary judgment as to those claims.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Robert Dickman, Michael Schaefer, Kara Mohr and Cary Pellowski is GRANTED.

Entered this 14th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge