

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

GARRY A. BORZYCH,

Plaintiff,

v.

ORDER

03-C-0575-C

MATTHEW J. FRANK, Secretary of Wisconsin
Department of Corrections (DOC);
STEVE CASPERSON, Administrator of
Wisconsin's Department of Adult Institutions (DAI);
CINDY O'DONNELL, Office of the Secretary (OOS);
SANDRA HAUTAMAKI, Corrections Complaint Examiner;
DANIEL BERTRAND, Warden of Green Bay Corr. Inst.;
PETE ERICKSON, Security Director of G.B.C.I.;
LT. WAYNE NATZKE, Lieutenant at G.B.C.I.;
GLEN RIPLEY, Inmate Complaint Examiner (ICE); and
KATHLEEN BIERKE, Reviewer of Rejected Complaints,

Defendants.

In an order dated January 5, 2004, I allowed plaintiff to proceed on his claims that

(a) defendants Frank, Casperson, O'Donnell, Hautamaki, Bertrand, Erickson, Natzke, Ripley and Bierke violated his rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act, the equal protection clause of the Fourteenth Amendment and several state laws when they deprived him of his copies of "Temple of

Wotan” and “Creed of Iron;”

(b) defendants O’Donnell and Hautamaki authorized defendant Erickson to confiscate two of plaintiff’s books in retaliation for filing a grievance;

(c) defendants Frank, Casperson and Bertrand violated his rights under the establishment clause of the First Amendment by allowing inmates in the segregation unit to keep copies of the Bible or Koran but not Odinist literature; and

(d) defendants Bertrand, Ripley and Bierke conspired to deprive him of his two religious texts.

I dismissed several other claims plaintiff raised in his complaint because they were not legally viable. One of the claims I dismissed was a claim that defendants deprived plaintiff of his Fourteenth Amendment procedural due process rights when they took his copies of “Temple of Wotan” and “Creed of Iron.” I concluded that because there are state remedies available to plaintiff for the loss of property, he failed to state a legally cognizable claim that the state has deprived him of his property without due process. Now plaintiff has filed a document titled “Notice of Motion and Motion to Alter or Amend Judgment,” in which he argues that it was legal error to dismiss his due process claim. He appears to believe that because his due process claim has been dismissed, he can no longer continue to litigate his claims for recovery of his religious texts under the First Amendment, the Religious Land Use and Institutionalized Persons Act, the equal protection clause of the Fourteenth Amendment

and several state laws. He is mistaken.

The fact that there exists a state court procedure that plaintiff may use to challenge the taking of his property means only that plaintiff cannot prove a violation of his right to procedural due process in this court. By enacting state laws allowing for the recovery of improperly seized property, the state has supplied individuals with a means of obtaining process in its courts. However, the dismissal of plaintiff's due process claim does not affect his other claims in this court. If plaintiff were to prove that when defendants took plaintiff's religious texts, they retaliated against him for exercising his constitutional rights or violated the First Amendment, the Religious Land Use and Institutionalized Persons Act, the equal protection clause of the Fourteenth Amendment or any one or more of the several state laws plaintiff alleges were violated, this court has the authority to grant plaintiff injunctive relief, which may include an order requiring defendants to return plaintiff's religious texts to him.

Because there is no legal basis for plaintiff's argument that this court erred in dismissing his procedural due process claims, plaintiff's motion to alter or amend the January 5 order will be denied.

ORDER

IT IS ORDERED that plaintiff Garry A. Borzych's motion to alter or amend this

court's January 5, 2004 order is DENIED.

Entered this 19th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge