

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

TONY G. MERRIWEATHER,
STEVEN D. STEWART,
DAVID WALKER, DAVID HUDSON,
RAYFUS DUKES, MAURICE GREER,
REYNALDO CASTELLANO, ANDRE
TURNER, JIMMY BRIDGES, SIMON
MARQUEZ, and all those similarly
situated,

Plaintiffs,

v.

DEPARTMENT OF CORRECTIONS,
JON LITSCHER, Secretary; STEVEN
CASPERSON, Administrator; GERALD
BERGE, Warden; PETER A. HUIBREGTSE,
Deputy Warden,

Defendants.

ORDER

03-C-736-C

This is a civil action brought by nine plaintiffs confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin and one plaintiff confined at the Green Bay Correctional Institution in Green Bay, Wisconsin. Defendants have removed the case to this court from the Circuit Court for Dane County, Wisconsin, because the complaint alleges

violations of plaintiffs' federal constitutional rights in addition to their rights under state law. In vague terms, plaintiffs allege the following violations of their rights;

1) DOC 309 I.M.P. #1 and a memorandum on property limitations was improperly promulgated under Wis. Stat. § 227;

2) The 50-item limitation on the number of photographs of family, children, loved ones and religious rites that an inmate may possess violates plaintiffs' First Amendment constitutional rights;

3) The ban on plaintiffs' possession of pornographic or nude magazines, photographs, books, and novels violates plaintiffs' First and Fourteenth Amendment rights;

4) Plaintiffs' First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights were violated when defendants failed to properly promulgate DOC 30-9 I.M.P. #1 and a memorandum dated November 11, 2002;

5) The ban on plaintiffs' possession of cassette players, radios, cassette tapes, rap music, language tapes, religion, education, African culture, Mexican culture and Islamic rites of worship and culture violates plaintiffs' First and Fourteenth Amendment rights;

6) Defendants' prohibition and confiscation of plaintiffs' legally published commercial magazines, political and religious publications, books and newspapers labeled as gang related or group resistance without any proof or justification violates plaintiffs' First and Fourteenth Amendment rights.

Defendants note correctly that before plaintiffs may proceed with their case in this court, the complaint must be screened pursuant to 28 U.S.C. § 1915A. However, before I will screen the merits of the complaint plaintiffs have filed in this case, plaintiffs will have to overcome another hurdle to their prosecution of their federal claims in this court.

In Lindell v. Litscher, 212 F. Supp. 2d 936 (W.D. Wis. 2002), I ruled that I would not allow prisoners proceeding pro se to prosecute a group complaint in this court because of the many problems inherent in administering such cases. First, there is no guarantee that prisoners who bring joint lawsuits will remain in contact with each other for the length of time it takes a lawsuit to reach resolution. Prisoners are subject to transfer from one institution to another, as plaintiff Simon Marquez can attest in this case. He already has been moved to the Green Bay Correctional Institution and out of the Wisconsin Secure Program Facility where the other plaintiffs remain. In addition, prisoners are moved within an institution from one cell block to another and to administrative and punitive segregation status. They have limited freedom, if any, to meet with co-plaintiffs to discuss strategy for a combined lawsuit or to draft documents jointly for filing in a case.

Second, all too often one inmate takes charge of the multi-plaintiff lawsuit and obtains the agreement of other inmates to act on their behalf in prosecuting the joint lawsuit although he lacks the legal authority to do so. This is a particularly tempting solution in multiple prisoner suits coming out of the Wisconsin Secure Program Facility, where

prisoners have extreme difficulties communicating with one another. Thus, there is no way for the court to insure that each co-plaintiff would receive the information he would need before agreeing to the strategic decisions being made in the case.

Third, Fed. R. Civ. P. 11 requires any person who files a lawsuit to certify by his signature that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the allegations of the complaint are well grounded in fact and the lawsuit is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and that the filing of the complaint is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needlessly increase the cost of litigation. Six of the ten co-plaintiffs in this case have signed their names to an otherwise blank piece of paper attached to the back of the complaint. It is not clear whether these plaintiffs saw and read the complaint that they were signing. Whether each plaintiff has a full copy of the complaint raises particular concerns here, where the complaint and its attachments are 136 pages long. The circuit court record shows that plaintiffs requested and were granted leave to proceed as paupers. They have paid nothing toward their state court filing fee. Thus, it is difficult to imagine how any one or more of them would have had the ability to pay the costs of copying the complaint for 10 separate plaintiffs. In any event, the cost to prisoner pro se litigants of managing a multi-plaintiff suit quickly outpaces their ability to pay the costs. Prisoners earn meager wages, if they earn wages at all. The cost of

photocopying documents alone is often prohibitive.

Fourth, for the pro se litigant who lets another inmate prosecute a joint action on his behalf, there is significant potential for adverse consequences. Under the 1996 Prison Litigation Reform Act, prisoners who file claims that lack legal merit or who sue defendants who are immune from suit are subject to the three-strike provision in 28 U.S.C. § 1915. In some instances, courts impose other sanctions as well on persons who bring lawsuits that lack merit. A pro se litigant who lets another inmate file a joint complaint for him may find himself denied the opportunity to file suits without prior payment of the full filing fee or subjected to monetary sanctions.

Finally, to the extent that a pro se prisoner litigant wishes to recover money damages for alleged unconstitutional practices or conditions, it does not help him to file his suit along with other prisoners. Each prisoner litigant claiming damages is required to prove his own damages independently. Joint filings concerning individual claims of injury only raise the costs of litigating the case and needlessly complicate its management.

Accordingly, I will dismiss plaintiffs' complaint insofar as it seeks relief for alleged violations of their constitutional rights, without prejudice to each plaintiff filing his own separate lawsuit. However, I will remand the case to the Dane County Circuit Court for plaintiffs' prosecution of their one state law claim: that DOC 309 I.M.P. #1 and a memorandum on property limitations were improperly promulgated under Wis. Stat. § 227.

Should any plaintiff file a new lawsuit raising the constitutional claims alleged in the complaint in this case, he should be aware that I will not search the attachments to the complaint for facts relating to his claims. He must set out the allegations supporting or explaining his claims. He should describe his claims in short and plain statements, saying no more than is necessary to explain what happened, where it happened, when it happened, who did it, and what he wants the court to do about it.

Finally, each plaintiff intending to file his own lawsuit should be aware of the requirement that he pay the \$150 fee for filing the complaint or file a request for leave to proceed in forma pauperis that is supported by a trust fund account statement for the six month period immediately preceding the filing of his complaint.

ORDER

IT IS ORDERED that the federal law claims are DISMISSED from this case without prejudice to each plaintiff's refiling the claims in his own lawsuit separate from this one.

Further, IT IS ORDERED that this case is REMANDED to the Circuit Court for

Dane County for resolution of plaintiffs' state law claim.

Entered this 30th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge