

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

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JOHN E. BROWN,

Petitioner,

ORDER

v.

03-C-139-C

GARY H. HAMBLIN, Dane County Jail;  
JOSEPH M. NORWICK; BRIAN L.  
WILLISON; RON BOYLAN; MICHAEL PLUMER;  
M. TANYA MOLONY; LT. SAMPSON;  
SGT. LURKIN; DEPUTIES THEAMKE,  
SKINNER, WAGNER, FARMER, MILLER and  
CLASSIFICATION OFFICE PERSONNEL,

Respondents.  
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Petitioner John E. Brown, a prisoner at the Dane County jail in Madison, Wisconsin, has submitted a proposed complaint. He requests leave to proceed in forma pauperis. From petitioner's trust fund account statement, it appears that petitioner presently has no assets or means with which to pay an initial partial payment of the \$150 fee for filing his complaint. There have been only two deposits to his prison account in the last five months, and they were at the beginning of the five-month period. As of February 18, 2003, petitioner had exhausted all but \$.05 of the earlier deposits. Therefore, I will not assess an

initial partial payment of the fee for filing the complaint. However, petitioner should be aware that he is obligated to pay the \$150 filing fee, even though he does not presently have funds in his prison account. 28 U.S.C. § 1915(b)(1). His account will be monitored and the fee must be taken in monthly installments when the funds exist.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See 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 had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. In this case, petitioner will be denied leave to proceed in forma pauperis and the case will be dismissed because petitioner's claim is legally frivolous.

In his complaint, petitioner alleges the following facts.

#### ALLEGATIONS OF FACT

Petitioner was booked into the Dane County jail on September 16, 2002, and was held in the "P.S.B." until September 20, 2002. On September 20, petitioner was transferred to the "C.C.B." and was forced to sleep on a mattress on the floor for a total of 28 days until

October 23, 2002, between cell blocks 611, 703, 707 and 714. Between February 13, 2003 and February 20, 2003, petitioner was made to sleep on a floor mattress for another 8 days. The respondents either made the rules of the prison or enforced the rules. In a grievance petitioner filed with A. Schultz on December 31, 2002, he wrote that even though inmates were provided cleaning supplies every morning at 5:30 a.m., sleeping on a floor mattress caused him to inhale “dirt, dust and debris” that had landed on the “mattress, sheet and cover” as a result of “people . . . walk[ing] back and forth from cells with dirt under their shoes.” He complained also that he was unable to sleep or rest during the day because of “people walking around your head all day.”

#### OPINION

Jail officials are responsible for providing the “basic necessities of civilized life.” Johnson v. Pelker, 891 F.2d 136, 139 (7th Cir. 1989). This does not mean, however, that prisons or jails need to be comfortable, Rhodes v. Chapman, 452 U.S. 337, 349 (1981). In fact, “[i]nmates cannot expect the amenities, conveniences and services of a good hotel.” Harris v. Fleming, 839 F.2d 1232, 1235 (7th Cir. 1988). The Eighth Amendment draws its meaning from “evolving standards of decency in a maturing society,” and prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain” or that are “grossly disproportionate to the severity of the crime warranting imprisonment.”

Rhodes v. Chapman, 452 at 346, 347.

Petitioner's allegations that he was required to sleep on a mattress on the floor of his cell for 28 days in a two-month period and 8 days in another month does not describe conditions of confinement that can be characterized as constituting cruel and unusual punishment. Modern society would not find a prisoner's inability to "rest" during the day offensive. Moreover, as unpleasant as it might have been for petitioner to have to sleep with bedding that had accumulated a day's worth of dust and dirt kicked up by people walking in and out of their cells, petitioner concedes that cleaning supplies were distributed every morning at 5:30 a.m. In the absence of serious aggravating circumstances, such as having to sleep for a prolonged period of time on a cold cement floor without a mattress, or low cell temperatures and no blankets or grave vermin infestation, the conditions petitioner describes fall far short of the type of egregious conditions prohibited by the Eighth Amendment. Compare Lynch v. Sheahan, 1992 WL 132525 at \*3 (N.D. Ill. June 2, 1992) (prisoner states a claim of constitutional dimension where he alleged he was subject to contact with rats and cockroaches that crawled over his floor mattress and person while he slept). Accordingly, petitioner's request for leave to proceed in forma pauperis on his claim that respondents violated his Eighth Amendment rights by forcing him to sleep on a mattress on the floor will be denied because the claim is legally frivolous.

ORDER

IT IS ORDERED that

1. Petitioner John E. Brown's request for leave to proceed in forma pauperis on his claim that respondents violated his Eighth Amendment when they forced him to sleep on a mattress on the floor is DENIED and this case is DISMISSED with prejudice because petitioner's claim is legally frivolous;

2. The unpaid balance of petitioner's filing fee is \$150; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2) as soon as petitioner has the means to make the payments;

3. A strike will be recorded against petitioner pursuant to § 1915(g); and

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

Entered this 16th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge