IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LAWRENCE RAY NORMAN,

Petitioner,

v.

HONORABLE ALLAN B. TORHORST;
JAMES DRUMMOND; SHARON A. RIEK;
MICHAEL R. YOUNG LOVE; MARK LUKOFF;
and UNKNOWN COURT OFFICIALS AND
JAILERS,

Respondents.

ORDER

04-C-203-C

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Petitioner Lawrence Ray Norman requests leave to proceed in forma pauperis in this civil action for declaratory, injunctive and monetary relief. In his complaint, petitioner alleges jurisdiction under 42 U.S.C. §§ 1983 and 1985, Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) and the federal Tort Claims Act, 28 U.S.C. §§ 2671-1860. He is suing respondents for subjecting him to mind control while he was a prisoner at the Racine County jail and conspiring to coerce him to accept a plea agreement. Because petitioner was not a prisoner at the time he filed his complaint in this court, this suit is not governed by the 1996 Prison Litigation Reform Act.

From the financial affidavit petitioner has given the court, I conclude that he is unable to prepay the fees and costs of starting this lawsuit. However, petitioner's request for leave to proceed in forma pauperis will be denied, because even construing the complaint liberally Haines v. Kerner, 404 U.S. 519, 521 (1972), there is no arguable basis in fact or law for his claims against the respondents. Neitzke v. Williams, 490 U.S. 319 (1989).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

On August 28, 2002 petitioner was arrested by the Racine County Police Department for cocaine possession and disorderly conduct. Respondent Allan B. Torhorst is a judicial officer. Respondent James A. Drummond is a court commissioner. Respondent Sharon A. Riek is a district attorney. Respondents Michael R. Younglove and Mark Lukoff were petitioner's attorneys.

On August 29, 2002 and between May 6, 2002 and July 28, 2003, petitioner wrote lengthy letters to the courts stating that he had witnesses to prove that the Racine Police Department was untruthful and that the witness could testify that petitioner did everything he could to cooperate with the police. In addition, petitioner wrote that another witness could testify that the arresting officer checked petitioner's car and did not just shine the light in the car, but planted cocaine in petitioner's car. This information would contradict the

police report. Petitioner's two witnesses were never called to testify. Petitioner wrote motions to the court requesting it to take a fingerprint off the cocaine bag and to show petitioner the bag allegedly found in his car. The court ignored petitioner's motions.

Between October 21, 2002 and February 11, 2003, the Racine Police Department issued numerous parking tickets while petitioner was incarcerated in the Racine County jail. Usually after the police write three to four tickets they tow one's car away. However, the police did not tow petitioner's car away.

From 1994 until the present, all the respondents have been using mind control methods to impose psychological and physical duress on petitioner. Respondents at the Racine County Jail conspired to use "synesthesia," which is a method that affects the mind and body. This method consisted of keeping the jail cells cold all year round, using halogen and mercury lamps that stayed on 24 hours a day and made noise and feeding inmates small amounts of food. Respondents fed petitioner two pieces of toast, a tablespoon of butter and a tablespoon of jelly and 12 ounces of milk for breakfast, a small meat portion, a teaspoon of fruit and milk for lunch and a peanut butter sandwich, meat sandwich and sometimes fruit or a cookie for dinner.

These conditions put a person such as petitioner in a hypoglycemic state. In such a state, a person becomes weak, confused and loses concentration. The person is unable to store or process information and the subconscious mind takes over. At that point, it is easy

for others to implant thoughts and false memories in his or her mind. Black inmates that do not take psychosis medication are more objective once they are released from prison. Because of respondents' treatment, petitioner has become diabetic.

Because petitioner was in a mental state caused by respondents' conspiracy to expose him to synesthesia and because he feared for his life, petitioner accepted the plea agreement in Case No. 2002-CF-000906.

DISCUSSION

A. Actions Against Court Officials, Prosecutors and Attorneys

Although petitioner's complaint is difficult to decipher, I understand him to complain that the court, prosecutor and attorneys in Case No. 2002-CF-000906 conspired to force him to accept a plea agreement and refused to grant petitioner's requests to have two witnesses testify to his innocence and to verify that the alleged cocaine bag was planted in petitioner's car.

Petitioner's claims against respondents Torhorst, Drummond and Riek fail because these respondents are immune from suit. Respondents Torhorst and Drummond are judicial officers and from what I can gather from petitioner's complaint were acting in their judicial capacities at all times relevant to the complaint. Few doctrines are more solidly established at common law than the absolute immunity of judges from liability for their judicial acts,

even when they act maliciously or corruptly. Mireles v. Waco, 502 U.S. 9 (1991). This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants. Pierson v. Ray, 386 U.S. 547, 554 (1967). The scope of judicial immunity is defined by the functions it protects, not by the person to whom it attaches. Forrester v. White, 484 U.S. 219 (1988). However, it is unquestioned that immunity applies to "the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." Id. Because petitioner's claim against respondents Torhorst and Drummond is based on his dissatisfaction with their judicial actions, there is no arguable basis in fact or law for his claims against them.

Petitioner's claim against respondent Riek fails because, as a prosecutor, Riek is entitled to absolute immunity. In Buckley v. Fitzsimmons, 509 U.S. 259 (1993), and Imbler v. Pachtman, 424 U.S. 409 (1976), the Supreme Court held that prosecutors are entitled to absolute immunity when they act as advocates for the state in preparing for and initiating a prosecution but are protected only by qualified immunity when engaged in investigatory conduct such as evidence gathering. Buckley, 509 U.S. at 272-73; see also Newsome v. McCabe, 256 F.3d 747, 749 (7th Cir. 2001) (absolute immunity forecloses action against prosecutor in case where prosecutor declined to put plaintiff on trial a second time after court vacated his conviction). Petitioner alleges no facts from which an inference

may be drawn that she was not carrying out her duties as a prosecutor by preparing for and initiating a prosecution against him. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (complaint must give defendant sufficient notice of claim to enable him to file answer).

Respondents Younglove and Lukoff cannot be sued in federal court for a different reason. In order to bring a § 1983 claim, petitioner must allege that the respondent deprived him of a right secured by the Constitution or laws of the United States while the respondent was acting under color of state law . See, e.g., Donald v. Polk County, 836 F.2d 376, 379 (7th Cir. 1988). Regardless whether respondents Younglove and Lukoff were privately retained, appointed by the court, or members of the state public defender's office, they were not acting under color of state law in their roles as petitioner's lawyers. Polk County v. Dodson, 454 U.S. 312, 325 (1981) (lawyers performing traditional functions as counsel in criminal proceedings not state actors). As to petitioner's § 1985 claim against respondents, petitioner has failed to allege any facts that respondents conspired against him because of his race, sex or religion. Volk v. Coler, 845 F.2d 1422, 1434 (7th Cir. 1988) (Section 1985(3) applies to conspiracies to deprive a person of his or her civil rights on the basis of sex, ethnicity and religion); see also United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 838 (1983) (Section 1985(3) does not reach conspiracies having a non-racial motivation, such as commercial interests). The only racial fact that petitioner alleges is that other black inmates who do not take psychosis

medication are more objective when they are released from prison or jail. This information is insufficient to suggest that respondents acted against petitioner because of his race. Loy v. Clamme, 804 F.2d 405, 408 (7th Cir. 1986) (prisoner did not state claim under § 1985(3) and 1986 because he failed to allege any racial animus).

Because respondents Torhorst, Drummond, Riek, Younglove and Lukoff are not subject to suit, I will deny petitioner leave to proceed in forma pauperis on his claims against them. Petitioner does not allege any unconstitutional acts on the part of unknown court officials. Therefore, he will not be allowed to proceed against these unnamed respondents.

B. Claims Against Unknown Jailers

Petitioner appears to contend that because of the conditions at the Racine County Jail, such as a cold cell, halogen and mercury lamps buzzing and remaining lit and being fed small amounts of food, petitioner suffered hypoglycemia and synesthesia, which allowed respondent unknown jailers to implant thoughts and false memories in his mind. As a result of this mind control, petitioner has become a diabetic and accepted a plea agreement despite his alleged innocence.

Petitioner's claim of respondents' implanting thoughts and false memories in his mind are simply too fanciful to entertain. According to the Oxford English Dictionary Online, the word "synesthesia" in psychology means "a sensation in one part of the body produced by

a stimulus applied to another part." It denotes the rare capacity to hear colors, taste shapes, or experience other equally startling sensory blendings. A synesthete might describe the color, shape, and flavor of someone's voice or music whose sound looks like shards of glass, a scintillation of jagged, colored triangles moving in the visual field. Or, seeing the color red, a synesthete might detect the "scent" of red as well. The experience is frequently projected outside the individual, rather than being an image in the mind's eye. Cytowic, R.E.: Synesthesia: Phenomenology And Neuropsychology. A Review of Current Knowledge. Psyche, 2(10), July 1995. This definition fails to support petitioner's claim of mind control against respondents. Furthermore, "[c]onditions, alone or in combination, that do not . . . fall below the contemporary standards of decency are not unconstitutional, and 'to the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.'" Caldwell v. Miller, 790 F.2d 589, 601 (7th Cir. 1986) (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). "The Constitution does not mandate that prisons be comfortable, and a prison . . . which houses persons convicted of serious crimes and who have demonstrated a propensity to violence or escape cannot be free of discomfort." Id.; see also Tesch v. County of Green Lake, 157 F. 3d 465, 476 (7th Cir. 1998) (pretrial detainees not entitled to comfortable conditions).

For example, petitioner appears most concerned about the food provided by the Racine County jail. Despite petitioner's dissatisfaction, the diet provided by respondents

appears balanced and nutritious. Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir. 1996) (a failure to provide an inmate with "nutritionally adequate food" will constitute a violation of the Eighth Amendment if it persists for an extended period). Although petitioner would have preferred larger portions, he has not alleged that the portions were insufficient for constitutional purposes. Hutto v. Finney, 437 U.S. 678, 683, 686-87 (1978) (diet consisting of fewer than 1,000 calories each day could violate Eighth Amendment if maintained for substantial time period). Inmates do not have a right to receive the diet of their choice. Carroll v. DeTella, 255 F.3d 470, 472 (7th Cir. 2001); Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994); see also Thompson v. Gibson, 289 F.3d 1218, 1222 (10th Cir. 2002).

Petitioner fails to allege facts that state a constitutional deprivation under any constitutional amendment or federal law. As to petitioner's claim under 42 U.S.C. § 1985 against the unknown jailers, as stated earlier, petitioner fails to allege any facts that the jailers conspired against him because of his race.

I will deny petitioner leave to proceed in forma pauperis on his claims against the unknown jailers. I will deny petitioner's request that this court order transcripts for Case No. 2002-CF-000906 as moot.

ORDER

IT IS ORDERED that:

1. Petitioner Lawrence Ray Norman's request for leave to proceed in forma pauperis on his claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985 is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;

2. Petitioner's request for this court to order transcripts in Case No. 2002-CF-000906 is DENIED as moot; and

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

Entered this 27th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge