

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

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KEIFVIN MALONE,

Plaintiff,

v.

JOHN CLARK,

Defendant.

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ORDER

04-C-229-C

On May 25, 2004, I screened plaintiff's complaint in this case pursuant to 28 U.S.C. § 1915A and granted plaintiff leave to proceed on his claim that in November 2003, defendant John Clark violated his rights under the First Amendment by issuing him a conduct report in retaliation for his having complained about the actions of another prison official. On June 21, 2004, plaintiff moved for a preliminary injunction, seeking expungement of the conduct report, presumably so that he could be reclassified to a lower security level. In an order entered on July 12, 2004, I scheduled briefing on the motion and asked the parties to adhere to this court's Procedure To Be Followed On Motions For Injunctive Relief, a copy of which was enclosed with the order. Now plaintiff has supported his motion. In addition, counsel for defendant has written to say that she has not received

a copy of any of plaintiff's submissions other than his complaint. Therefore, she requests that the court send her copies and grant defendant an enlargement of time in which to oppose the motion. Defendant's request for more time in which to oppose plaintiff's motion will be denied as moot. A review of plaintiff's submissions in support of his motion for preliminary injunction reveals that the motion must be denied at the outset for plaintiff's failure to put in any evidence to show that he will suffer irreparable harm if the motion is not granted.

Although plaintiff submitted proposed findings of fact in support of his motion, they are largely incomprehensible. They do not tell any kind of coherent story about what happened to plaintiff to make him believe that he is the victim of retaliation for the exercise of his constitutional rights, that he stands more than a negligible chance of success on the merits of his claim and that he will suffer irreparable harm if an immediate injunction is not issued. The only admissible evidence plaintiff has submitted in support of his motion is his "declaration in support of the motion for preliminary injunction." Therefore, for the purpose of deciding the motion for preliminary injunction, I find as fact all of the following averments in plaintiff's declaration that are grounded on his personal knowledge.

## FACTS

On November 4, 2003, in the Douglas County jail, defendant Clark interviewed plaintiff about a letter that plaintiff had sent to a Warden Thompson dated October 20, 2003. In the letter to Warden Thompson, plaintiff stated that he feared retaliation. He also wrote that he had “some evidence as to the potential for retaliation.” During the interview, plaintiff informed defendant Clark that he had a letter that he had written to a corrections complaint examiner regarding a threat by an Assistant Superintendent Dale Alsum to send plaintiff out of minimum security if plaintiff “pushed” him. Plaintiff believed this supported his statement (presumably that he had some evidence to prove potential retaliation). Defendant Clark responded by saying, “You’re lying, you have nothing because I’ve been through your property.” Next, defendant Clark asked, “Why did you go over my head, why didn’t you contact me regarding your issues?” Plaintiff responded that he believed that Clark was discriminating against inmates of different races and he wanted Warden Thompson and a Mr. Mixdorf to know what was going on at the Gordon Correctional Center.

After this interview, defendant Clark issued plaintiff a conduct report for lying, lying about staff, and group resistance and petitions. The conduct report did not state who plaintiff lied about. As a result of the conduct report, plaintiff served 76 days in segregation, received an increase in security classification and has been transferred to a medium security

facility.

## OPINION

A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 2948, pp. 129-30 (2d ed.1995)); see also Shaffer v. Globe Protection, Inc., 721 F.2d 1121, 1123 (7th Cir.1983). As a threshold matter, plaintiff must show 1) a likelihood of success on the merits, 2) irreparable harm if the preliminary injunction is denied, and 3) the inadequacy of any remedy at law.

The harm plaintiff contends he continues to suffer as a result of defendant's alleged unconstitutional conduct is an increased security classification and assignment to a medium security institution rather than a minimum security institution. However, there are numerous factors that go into deciding an inmate's security classification and place of incarceration. Therefore, even if I accept plaintiff's assertion that defendant Clark issued him a conduct report for a constitutionally impermissible reason, plaintiff has provided no evidence to suggest that expungement of the conduct report would result in his immediate return to a minimum security institution and a lower security classification. Without such proof, plaintiff has failed to show that he will suffer irreparable harm if the injunction is not

granted.

Although plaintiff's motion will be denied, I am enclosing to Ma Manee Moua, counsel for defendant, a copy of plaintiff's submissions, together with a copy of this order, in order to complete defendant's record. I accept plaintiff's representation in his letter of August 18, 2004, that he mailed copies of his submissions to defendant Clark directly, given that Ms. Moua had not entered a notice of appearance in the case at the time plaintiff filed his documents. Plaintiff appears to be aware that he is to mail a copy of all of his future submissions to Ms. Moua.

#### ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Further, IT IS ORDERED that defendant's motion for an enlargement of time in which to respond to the motion for preliminary injunction is DENIED as moot.

Entered this 25th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge