

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

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WILLIE C. SIMPSON,

Petitioner,

v.

TIMOTHY DOUMA, PHILLIP  
KINGSTON, JIM SPANGBERG,  
WILLIAM NOLAND and MATTHEW J.  
FRANK,

Respondents.  
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ORDER

04-C-298-C

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner is presently confined at the Columbia Correctional Institution in Portage, Wisconsin. In an order dated June 2, 2004, I concluded that petitioner does not have the means to pay an initial partial payment of the fee for filing his complaint. Nevertheless, I must screen petitioner's complaint because he is subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. 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 respondent who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

#### ALLEGATIONS OF FACT

Petitioner Willie C. Simpson is confined in the Columbia Correctional Institution in Portage, Wisconsin. The following respondents hold positions at Columbia Correctional Institution: 1) Timothy Douma serves as the security director; 2) Phillip Kingston is warden; 3) Jim Spangberg works as a unit manager; and 4) William Noland is an inmate complaint investigator. Respondent Matthew J. Frank is Secretary of the Department of Corrections.

On November 6, 2003, petitioner was transported to the Milwaukee County jail so that he could attend court. On November 10, 2003, petitioner was returned to the Columbia Correctional Institution, where a Lieutenant Martin placed him in disciplinary segregation pending an investigation of an alleged incident that had occurred while he was at the Milwaukee County jail.

On November 11, 2003, Lieutenant Anthony Ashworth wrote a conduct report charging petitioner with disobeying orders, disruptive conduct and disrespect. The incident leading to the charges was described in the conduct report as follows:

On 11-09-03 at 10:15 A.M. CCI inmate Willie Simpson #331230 was being housed at the Milwaukee County Jail (OCO). Milwaukee County Sheriff Deputy Murphy came into contact with inmate Simpson who at this time was in a sub pod and requested the deputy to turn the TV. Deputy Murphy reports that inmate Simpson became agitated when he was informed that he could not turn the TV. According to Deputy Murphy's report inmate Simpson then started yelling and stated "bitch ass faggot, coward ass nigger and little faggot." Inmate Simpson was then given an order by Deputy Murphy to lock in. Inmate Simpson refused that direction. The order was given again and inmate Simpson replied "come put me in." Inmate Simpson then picked up a chair and threw that chair at a window. Inmate Simpson then started to return to his cell. As inmate Simpson was walking back to his cell he picked up another chair and threw that chair. Writer contacted the Milwaukee County Jail and verified that inmate Simpson was not disciplined at their facility for this incident.

Respondent Douma endorsed the conduct report. That same day, Douma placed petitioner on severe restrictions for breaking the jail's rules. On December 12, 2003, the Columbia Correctional Institution's adjustment committee held a disciplinary hearing on the conduct

report. Petitioner argued that Columbia Correctional Institution did not have jurisdiction to impose punishment for Milwaukee County jail rule violations. Nevertheless, the adjustment committee found petitioner guilty of the conduct report and sentenced him to 10 days' loss of recreation, 6 days' adjustment segregation and 180 days of program segregation. Petitioner appealed the adjustment committee's decision to respondent Kingston on December 19, 2003. Kingston affirmed the adjustment committee's decision, stating that even though petitioner was housed temporarily at the Milwaukee County jail, Columbia Correctional Institution still had legal custody of him.

On January 24, 2004, petitioner filed an inmate complaint, alleging due process and jurisdiction violations in connection with the conduct report. Respondent Noland affirmed respondent Kingston's decision and dismissed the complaint. Petitioner appealed Noland's decision to respondent Frank, who affirmed the decision on March 23, 2004.

## DISCUSSION

Petitioner argues that respondents violated his procedural due process rights as well as his rights under Wis. Stat. §§ 302.02(1m)(d) and 302.40 when they issued him a conduct report for alleged violations that occurred outside Columbia Correctional Institution. According to petitioner, respondents had no constitutional or state law authority to punish him for alleged violations arising from his stay at the Milwaukee County jail. In fact,

petitioner contends that respondents recklessly disregarded his rights under the constitution and state law.

#### A. Due Process

The Fourteenth Amendment prohibits a state from depriving “any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV. Before petitioner is entitled to Fourteenth Amendment due process protections, he must first have a protected liberty or property interest at stake. Averhart v. Tutsie, 618 F.2d 479, 480 (7th Cir. 1980). Liberty interests are “generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995) (citations omitted).

Prisoners do not have a liberty interest in remaining out of segregated confinement so long as the period of segregated confinement does not exceed the remaining term of their incarceration. Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not allow suit complaining about deprivation of liberty). In Sandin, 515 U.S. at 486, the Supreme Court held that an inmate's “discipline in segregated

confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest.” Petitioner does not have a liberty interest in remaining free of program segregation because such confinement does not impose an atypical and significant hardship on him in light of “the ordinary incidents of prison life.” Id. at 484. Therefore, petitioner was not entitled to due process protections at his hearing. Montgomery v. Anderson, 262 F.3d 641, 644 (7th Cir. 2001) (in absence of liberty interest, “the state is free to use any procedures it chooses, or no procedures at all”).

Because petitioner’s 10-day loss of recreation and his placement in adjustment segregation for 6 days and program segregation for 180 days does not implicate a liberty interest under Sandin, his request for leave to proceed in forma pauperis on his due process claim against respondents will be denied as legally frivolous.

#### B. State Law Claims

Petitioner asks the court to exercise supplemental jurisdiction over his claims that respondents violated state law in subjecting him to punishment for his conduct at the Milwaukee County jail. Even if I exercised supplemental jurisdiction over petitioner’s state law claim, petitioner’s claim would fail. Petitioner argues that Wis. Stat. §§ 302.02(1m)(d) and 302.40 do not confer jurisdiction on respondents to punish him for violating rules outside the county in which the prison is located. Wis. Stat. § 302(1m)(d) states that

“correctional institutions authorized under s. 301. 16 and their precincts are considered to be in the county in which the institution is physically located, and that county’s circuit court has jurisdiction of all crimes committed within the county.” Wis. Stat. § 302.40 states that jail staff may keep an inmate who violates jail rules in solitary confinement, under the care and advice of a physician, for no more than 10 days. Petitioner’s interpretation of the statutes is wrong. Although the Milwaukee County jail had physical custody over petitioner while he awaited his court proceeding, petitioner remained in the legal custody of the Wisconsin Department of Corrections. Under Wis. Stat. § 302.31, the Department of Corrections may use jails for the “temporary placement of persons in the *custody* of the department” (emphasis added). Wis. Stat. § 301.01(1) defines “department” as the “department of corrections.” Therefore, as long as petitioner is in the custody of the Wisconsin Department of Corrections, he is subject to its rules of discipline. I will deny petitioner leave to proceed in forma pauperis on his state law claim.

#### ORDER

IT IS ORDERED that

1. Petitioner Willie C. Simpson’s request for leave to proceed in forma pauperis on his due process and state law claims is DENIED because his claims are legally frivolous. This case is DISMISSED with prejudice;

2. The unpaid balance of petitioner's filing fee is \$150.00; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);

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 30th day of June, 2004.

BY THE COURT:  
BARBARA B. CRABB  
District Judge