

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

WILLIE WILLIAMS,

Plaintiff,

v.

REED TREFZ, MATTHEW SCULLION,
STEVEN CLEVEN, ELLEN RAY, KELLY
COON, KAREN GOURLIE, BRAD HOMPE,
JOHN SHARPE and GERALD BERGE,

Defendants.

ORDER

04-C-451-C

This case was filed in the Eastern District of Wisconsin on September 11, 2002. On January 25, 2003, The Hon. Lynn Adelman granted plaintiff leave to proceed in forma pauperis on his claim that defendants Trefz, a Sargent Tom, Officer Scullion, Officer Cleven, Officer Starkey, Brad Hompe, John Sharpe, Kelly Coon, Ellen Ray and Karen Gourlie deprived him of his Eighth Amendment rights by 1) deliberately subjecting him to constant cell illumination, which caused him to be deprived of his sleep, lose weight, become depressed and develop anti-social personality disorder; and 2) deliberately depriving him of soap, toilet paper and toothpaste. Judge Adelman denied plaintiff leave to proceed on all of

his other claims. On May 20, 2004, Judge Adelman dismissed defendant Sgt. Tom from this lawsuit for plaintiff's failure to identify him more completely so that he could be served with plaintiff's complaint. On June 30, 2004, Judge Adelman granted the remaining defendants' motion to transfer the case to this court.

All of the defendants have answered plaintiff's complaint. Ordinarily, once the defendants have answered a complaint, I would schedule the case for a preliminary pretrial conference. However, I have reviewed the records of this court and find that plaintiff raised in Williams v. Berge, 02-C-283-C, the identical claims on which Judge Adelman granted him leave to proceed in this case. I denied plaintiff leave to proceed in forma pauperis on those claims because the claims were legally frivolous. Specifically, I liberally construed plaintiff's complaint in case no. 02-C-283-C to allege the following facts in support of plaintiff's Eighth Amendment claim:

Respondent Hompe is manager of Alpha Unit, where daily bed checks continually awaken petitioner and amount to psychological torture. Respondent Hompe is restricting petitioner's access to clothing, sheets, pillows and other items. Respondent Hompe has deprived petitioner of all his property including soap, toothpaste and toilet paper in an effort to force plaintiff to turn around and sleep toward the other end of his bed.

Respondents Terfz and Tom turn petitioner's light on and make certain that it remains on throughout the entire eight-hour first shift and relay the message to the second shift to keep it on as well. This causes petitioner to lose sleep and suffer serious health and psychological problems. Respondent Terfz's main focus on a daily basis is to wake petitioner up and order him to turn the other way in his bed. Respondent Terfz told petitioner that

respondent Hompe has authorized Alpha Unit guards to wake any inmate that refuses to turn the other way in his bed and to remove items such as sheets, toilet paper and tooth paste until the inmate complies with the order. Respondent Terfz is upset because petitioner will not comply with the bed order and has verbally threatened petitioner by asking him if he thinks he's tough.

Respondents Coon, Ray and Gourlie are all inmate complaint examiners. All three are responsible for the unfair dismissal of 30 of petitioner's grievances.

. . . Respondent Berge finalizes the decisions on all inmate grievances and appeals. All of petitioner's complaints regarding the other respondents were brought to respondent Berge's attention, but Berge's only response was to tell petitioner not to write to him using legal loan paper.

In screening plaintiff's complaint, I assumed that he was deprived of soap, toilet paper and tooth paste for a full 15-day period beginning on March 1, 2002, despite the fact that a prison document dated March 1, 2002, attached to plaintiff's complaint said that he would be provided toothpaste and soap for 30 minutes at 7:00 a.m and 9:00 p.m. each day, as well as 12 squares of toilet paper at "reasonable intervals." I concluded that plaintiff's allegations did not constitute conditions reaching unconstitutional proportions. Harris v. Fleming, 839 F.2d 1232, 1235 (7th Cir. 1988); Lee v. Washington, No. 97 C 4710, 1999 WL 759609 (N.D. Ill. 1999) (denial of personal hygiene items such as soap, toothpaste and deodorant for two weeks did not rise to level of constitutional violation). Moreover, I concluded that plaintiff's ability to regain the items was entirely within his own control if he were to simply "turn the other way and sleep toward the other end of [his] bed."

As for plaintiff's claim of sleep deprivation, I found from plaintiff's own admissions that his light was kept on continually during the prison's first and second shifts and he was routinely awakened by various defendants because he refused "to turn the other way in the bed." Under these circumstances, I concluded that plaintiff's allegations were not sufficiently serious to implicate the Eighth Amendment.

Plaintiff appealed from the judgment dismissing case no. 02-C-283-C, but did not argue on appeal that I erred in determining that his Eighth Amendment claims were legally frivolous. On August 20, 2003, the Court of Appeals for the Seventh Circuit dismissed his appeal.

In the complaint in this case, plaintiff alleges that defendants Brad Hompe and John Sharpe routinely awaken him "to force [him] to sleep in or towards a certain direction." [sic] With respect to the toiletries, plaintiff alleges that defendants "deprive me of . . . soap, toilet paper, toothpaste, etc., simply because I wouldn't turn the other way and lay toward a toilet. . . ."

28 U.S.C. § 1915A permits a court to identify cognizable claims in the complaint and dismiss all or any portion of it "if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted." Plaintiff's claims are legally frivolous. They are identical to the same claims I found to be legally frivolous in Williams v. Berge, 02-C-283-C, and that plaintiff failed to challenge on appeal. Therefore, this case will be dismissed.

ORDER

IT IS ORDERED that this case is DISMISSED because plaintiff's Eighth Amendment claims of sleep deprivation and deprivation of soap, toilet paper and toothpaste are legally frivolous. The clerk of court is directed to enter judgment for all the defendants.

Entered this 14th day of July, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge