IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DONALD LEE PIPPIN, JR.,

ORDER

Petitioner,

04-C-582-C

v.

MATTHEW FRANK, Sec. of WI DOC;
STEVE CASPERSON, DAI Admin.;
JUDY P. SMITH - Warden of Oshkosh
Correctional Institution;
JIM SCHWOCHERT, Security Director
at OSCI; and JAMES A. ZANON,
Program Supervisor at OSCI; TIM PIERCE,
ICE at OSCI; JENNIFER DELVAUX,
ICE at OSCI; LAWERNCE STAHOWIAK,
Registrar at OSCI; RUTH TRITT, Mail
Room Supervisor at OSCI; ALI FONTANA,
Center Director at OSCI; BROOKS FELDMANN,
Center Director at OSCI; ELIZABETH YOST,
Librarian/Notary at OSCI; TOM EDWARDS,
HSU Director at OSCI; DR. ROMAN KAPLAN,
Medical Doctor at OSCI; DR. ALEXANDER STOLARSKI,
Chief Psychologist at OSCI; JULIE (?), Main Kitchen
Supervisor at OSCI; CAPT. MATT JONES, Security/
Segregation at OSCI; CAPT. DERRINGER, 1st Shift
Security at OSCI; CAPT. SCHROEDER, 2nd Shift
Security at OSCI; LT. BUECHEL (?-sp), 1st Shift
Security at OSCI (accomp. Dr. A.S. on 4/20/04);
LT. KEN KELLER, Security/Segregation at OSCI;
LT. LINGER, 1st Shift Security at OSCI; LT. ROBERT
BLECHL, 2nd Shift Security at OSCI (now Capt. and

1st Shift); LT. SCHNEIDER, 2nd Shift Security at
OSCI; LT. BLOTCHEL (?sp), 2nd Shift Security at
OSCI (Female Lt. involved on 11/15/03); SGT. KOONEN,
1st Shift Sgt. P-Bldg. at OSCI; SGT. MONROE, 1st Shift
Sgt. Seg. at OSCI; SGT. RASMUSON, 2nd Shift Sgt.
P-Bldg. at OSCI; SGT. GILBERTSON, 3rd Shift Sgt.
P-Bldg. at OSCI; CO PLATZ, 3rd Shift P-Bldg. at OSCI;
CO S. DOMAN, 2nd Shift Utility at OSCI; CO RADKE,
3rd Shift Seg. at OSCI; CO SMITH, 3rd Shift Seg. at OSCI;
CO WERNER, 1st Shift Seg./Hearing Transport Officer
at OSCI; CO JENSEN, 1st Shift P-Bldg. (now U-Bldg) at
OSCI; and CO CAROL COOK, Seg. Property Officer/Mail
at OSCI,

Respondents.

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In July 2004, Donald Lee Pippin, Jr. and Shannon Charles Steindorf filed this civil action challenging various conditions of their confinement at the Oshkosh Correctional Institution in Oshkosh, Wisconsin. I dismissed the case on August 24, 2004 without prejudice to each petitioner's refiling the claims in his own separate lawsuit. Petitioners appealed that decision and, on January 28, 2005, the Court of Appeals for the Seventh Circuit vacated this court's order and remanded the case for further proceedings in light of Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004). On March 30, 2005, I dismissed Steindorf from this action for his failure to show that he is entitled to indigent status under 28 U.S.C. § 1915. In an order dated April 18, 2005, I assessed petitioner Pippin an initial partial payment of $10.97, to be paid by May 2, 2005. Petitioner submitted the initial

partial payment on May 9, one week after the deadline. I will overlook petitioner's failure to meet the deadline and consider his payment timely filed.

Because petitioner is proceeding in forma pauperis in this action, his complaint must be screened pursuant to the in forma pauperis statute, 28 U.S.C. § 1915. In performing that screening, the court must read the allegations of the complaint generously, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

Because Steindorf has been dismissed from this case, I have omitted allegations pertaining only to him. From petitioner's complaint, I understand him to be alleging the following.

ALLEGATIONS OF FACT

At the time he filed this complaint, petitioner Donald Lee Pippin, Jr. was an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. Prior to that time, petitioner and an inmate named Shannon Charles Steindorf were confined as prisoners in P-Building in the Oshkosh Correctional Institution. Petitioner is openly gay and disabled.

Steindorf is half Hispanic, heterosexual and partially disabled. He suffers from ADHD and is blind in his right eye. Respondents are various persons who hold positions within the Wisconsin Department of Corrections and the Oshkosh Correctional Institution.

Sometime around June 28, 2003, petitioner and Steindorf asked to be put in the same cell. Respondent Koonen approved the move to become effective on July 3, 2003. Koonen then left on vacation without logging approval for the move for respondent Jensen. Jensen made snide remarks about the move, making it clear he thought the inmates' desire to be together was sexual in nature. However, petitioner and Steindorf have a "father/son" relationship only. They were allowed to be celled together a week later.

After petitioner and Steindorf moved into the same cell, respondents Platz, Rasmuson and Gilbertson made life stressful for them and let it be known that they did not like them.

On July 29, 2003, a letter was returned to petitioner for being "inappropriate and pornographic." It contained information revealing that petitioner is gay, but gave no "graphic details." Nevertheless, the letter was passed around among staff and respondent Doman "made many comments."

Shortly after the "letter event," petitioner was told he would be transferred to a minimum security facility. However, the transfer was cancelled at the last minute by Health Services Unit staff because petitioner was in a wheelchair and could not be accommodated at the proposed new facility. The attempt to move petitioner affected a court case he was

helping Steindorf with at the time.

From March 27, 2003 until September 14, 2003, petitioner was forced to use a wheelchair because he had no corrective shoes. The problem started as early as August of 2002, yet medical staff failed to act.

Sometime in August 2003, respondents Rasmuson and Feldmann moved Steindorf from P-Building to "Closed North." This cut petitioner off from direct daily contact with Steindorf and was intended to affect three cases petitioner was helping Steindorf prosecute at the time. Respondents Rasmuson and Feldmann claimed that Steindorf was being moved because he was unemployed, but this was a lie. Many inmates in P-Building were unemployed and for a much longer time than Steindorf. Respondent Koonen admitted the move made no sense. He agreed to bring Steindorf back to P-Building if Steindorf would work in the main kitchen. Steindorf then took a job in the main kitchen, but respondent Koonen told petitioner he could not implement Steindorf's move for a couple of weeks because of his busy schedule. Respondent Ali Fontana refused to help with the move. After several weeks had passed without the move's taking place, petitioner contacted respondent Koonen. By then, Koonen had completely changed his position, saying he would never bring Steindorf back to his unit because Steindorf was nothing but a troublemaker and a problem.

At this point, petitioner and Steindorf wrote a letter styled as a criminal complaint listing 52 witnesses to harassment by staff and requesting a criminal investigation and

charges. On November 5, 2003, petitioners put the complaint in the mail to a friend to be copied for them.

Earlier, on July 23, 2003, petitioner and Steindorf signed an "agreement of adoption." Steindorf has never known his biological father and petitioner has no children and had been hoping to adopt a son. Petitioner and Steindorf also wanted to change Steindorf's name to reflect the adoption and have his birth certificate altered as well. It took petitioners months to figure out the procedures and where to get forms. During this process, Steindorf made petitioner primary power of attorney and Joan Marie Caraway, petitioner's mother, his secondary power of attorney.

On November 5, 2003, petitioner and Steindorf took their adoption documents to the prison library to have them notarized. Respondent Yost, the notary and chief librarian, read the documents and refused to notarize them. Instead, she took the papers and the inmates to respondent Schroeder, a second shift security officer. Schroeder told them their actions violated prison regulations prohibiting "enterprising," but that because they did not know their actions were wrong, he would not put them in segregation and they could file an inmate complaint over the issue.

After petitioner and Steindorf left respondent Schroeder's office, they mailed the adoption paperwork to family and wrote letters to the Attorney General, LAIP and the Wisconsin Legal Resource Center. All of the replies said that petitioners were within their

legal rights and the Department of Corrections could not stop the adoption process or interfere with it because it was a family law matter. Subsequently, petitioners were called separately to security, where respondents Blechl, Schneider and Blotchel made threats against them, telling them they "would protect their own from people like [petitioner and Steindorf]" and "would [make] them pay for trying to file" their papers. They refused to mail the papers to the court and tried to collect all the copies petitioner and Steindorf had in their possession. In searching the cells of petitioner and Steindorf, respondent Blechl grabbed all of their property, including legal paperwork, which affected several court cases in progress.

Petitioner feared for his safety. He wrote several letters to family, friends and clergy. Respondent Blechl illegally opened and stopped these letters, saying they were a threat to the institution and in violation of federal and state law. In his letters, petitioner asked the addressees to contact federal authorities and other parties to demand an investigation and help. Later, an investigator from the Winnebago County District Attorney's office conducted an interview regarding staff violations and petitioner's allegations of criminal wrongdoing. Respondent Linger sat in on the interview and tried to mitigate the information. Respondents Jones, Keller and Werner were also part of the "hearings." They told petitioner and Steindorf that they would be found guilty of lying about staff no matter what proof they had because "no one speaks out against staff at OSCI and gets away with

it." They told petitioner and Steindorf that they did not care who their letters were addressed to or what the law books claim.

Respondents Pierce and Delvaux are inmate complaint examiners. Both knew they were listed in "the original letter of complaint." Nevertheless, they continued to handle every complaint petitioner and Steindorf wrote and adjusted the words of every complaint to meet their goal of keeping petitioner and Steindorf from obtaining outside help. In addition, respondent Stolarski was listed in the original complaint. He conspired with the warden, security director and respondent Buechel to affect the court case associated with the adoption. Respondent Buechel created a false psychological evaluation and false files to make people believe that petitioner and Steindorf are unstable. The inmates' attempts to obtain their files have been blocked, although Steindorf was able to get copies of his report once he reached Green Bay.

Respondents Schwochert and Derringer conspired to affect the adoption proceedings by creating false costs for transportation to insure that petitioner and Steindorf could not afford the bill.

Respondent Monroe was assigned as petitioners' advocate at their disciplinary hearings. He refused to gather any evidence, take statements, record the hearings, speak with witnesses or organize a defense. He told petitioner and Steindorf, "I think the two of you should be put under the prison for life for what you tried to do. I am not going to do

anything for you and don't try to tell me my job. I will sit there but nothing more."

Respondent Blechl lied about who petitioner and Steindorf's letter was written to, claiming it was written to the media and not the courts. He swore that he interviewed everyone about the facts stated in petitioner's and Steindorf's complaint but this was false.

Respondent Smith works in segregation. In January, he came to petitioner's door and asked him to put his hand out of the trap. Petitioner asked why and Smith replied, "So I can break it and you cannot write any more letters. I am tired of reading your shit."

Respondent Radke stopped several legal letters from being processed and interfered with copies being sent between petitioner and Steindorf.

Respondents Tritt and Cook control the flow of mail. They lost petitioner's and Steindorf's mail, held their legal mail, lost library copies, denied them legal loans and aided others in cutting them off from outside help, affecting petitioners' contact with the courts. On June 22, 2004, two hours before petitioner was to give testimony in a John Doe hearing, respondent Cook deliberately forced him to pack up his property, which left him to give testimony without his notes. Respondent Tritt delayed mailing petitioner's papers to the court so that he did not have them for the hearing. Two motions petitioner filed with the court never arrived.

Respondent Schwochert, the institution security director, "signed off on all the actions being done under his command" and "denied all requests" made by petitioner and

Steindorf. He and the warden denied petitioner and Steindorf's joint law library time, although they had several issues pending in court.

Petitioner and Steindorf asked to be moved out of Oshkosh for their safety. Their request was ignored.

DISCUSSION

It is clear from petitioner's complaint that he believes he and inmate Steindorf have been singled out for harassment by respondents because of their relationship. However, most of petitioner's allegations are not serious enough to allege a violation of his constitutional rights.

A. First Amendment

1. Refusal to send letter on July 29, 2003

Petitioner alleges that a letter was returned to him on July 29, 2003 for being "inappropriate and pornographic." He contends that the letter did not contain any "graphic details" although it did indicate that petitioner is homosexual. He alleges further that staff passed the letter among themselves and that respondent Doman made comments about it.

The First Amendment protects a prisoner's right to send and receive mail. Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). Prison actions that affect an inmate's ability to

send or receive non-legal mail must be "reasonably related to legitimate penological interests." Thornburgh v. Abbott, 490 U.S. 401, 409 (1989); see also Turner v. Safley, 482 U.S. 78, 89-90 (1987) (setting forth four factor test); Bell v. Wolfish, 441 U.S. 520 (1979). Wis. Admin. Code § DOC 309.04(4)(c)(8)(a) allows prison officials to refuse delivery of mail that is pornographic. Petitioner's allegations suggest nothing more than a disagreement with this characterization of his letter. He concedes that the letter contained information indicating that he was homosexual. The official who returned petitioner's letter may be able to present a legitimate reason for not allowing plaintiff to send it; however, it is too early in this case to make that determination. Thus, at this stage in the proceedings, plaintiff's allegations are sufficient to support a First Amendment claim.

However, petitioner does not identify the person or persons allegedly responsible for the denial. "[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Dept., 95 F.3d 548, 555 (7th Cir. 1996); see also Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendants' identity). Accordingly, plaintiff will be granted leave to proceed against respondent Judy Smith, the warden at the Oshkosh Correctional Institution, for the purpose

of discovering the name of the individual who refused delivery of his letter. Early on in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed respondent and will set a deadline within which petitioner is to amend his complaint to include the unnamed respondent.

2. Respondent Blechl's refusal to send letters

Petitioner alleges that after respondents Blechl, Schneider and Blotchel threatened him and refused to mail his adoption papers to court, he feared for his safety and wrote letters to his friends and family asking them to contact federal authorities and demand that an investigation be conducted. He alleges further that respondent Blechl opened and stopped these letters because he believed they were a threat to the institution and that they violated federal and state law. As a general rule, inmate mail can be opened and read outside the inmate's presence. Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987). Thus, respondent Blechl did not violate petitioner's constitutional rights by merely opening his mail. It is not clear whether respondent Blechl refused to deliver petitioner's letters or merely delayed delivery. Petitioner alleges that the letters demanded an investigation and that the Winnebago County District Attorney's office conducted interviews regarding petitioner's allegations. From this, a reasonable inference can be drawn that petitioner's

letters were mailed. However, at this stage of the litigation, inferences must be drawn in favor of petitioner. Leahy v. Board of Trustees of Community College Dist. No. 508, 912 F.2d 917, 921 (7th Cir. 1990). Thus, I will assume that respondent Blechl refused to mail the letters. I cannot determine that respondent Blechl's actions were justified. Therefore, petitioner will be granted leave to proceed on this claim against respondent Blechl.

B. Access to Courts

Several allegations in petitioner's complaint implicate his right of access to the courts. It is well established that prisoners have a constitutional right of access to the courts for pursuing post-conviction remedies and for challenging the conditions of their confinement. Lehn v. Holmes, 364 F.3d 862, 865-66 (7th Cir. 2004); Campbell v. Miller, 787 F.2d 217, 225 (7th Cir. 1986) (citing Bounds v. Smith, 430 U.S. 817 (1977)). The right of access is grounded in the due process and equal protection clauses. Murray v. Giarratano, 492 U.S. 1, 6 (1989). To state a claim, the prisoner must allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). This rule is derived from the doctrine of standing, id., and requires the prisoner to demonstrate that a non-frivolous legal claim has been frustrated or impeded. In other words, the prisoner must plead at least general factual allegations suggesting that he "has suffered an injury over and above the denial." Walters v. Edgar, 163 F.3d 430, 434 (7th Cir. 1998). At a minimum,

he must allege facts showing that the "blockage prevented him from litigating a nonfrivolous case." Id.; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint). Petitioner's allegations regarding denial of his right of access to the courts fail to state a claim because he has not alleged that he was prevented from litigating a non-frivolous case.

1. Interference with communication between petitioner and inmate Steindorf

Petitioner alleges that a short time after his letter was returned on July 29, 2003, he was informed that he would be transferred to a minimum security facility but that this transfer did not occur because he was in a wheelchair and could not be accommodated at the new facility. He contends that the attempted transfer affected his ability to help inmate Steindorf with a court case. In the same vein, petitioner alleges that respondents Rasmuson and Feldman moved inmate Steindorf from P-Building to "Closed North" in August 2003, thereby cutting off petitioner from daily contact with him. He contends that this move was intended to affect three cases that petitioner was helping inmate Steindorf litigate.

These allegations are legally frivolous with respect to petitioner because he has no constitutional right to remain in a particular correctional institution, Whitford v. Boglino, 63 F.3d 527, 532 (7th Cir. 1995) (citing Meachum v. Fano, 427 U.S. 215, 224 (1976)), or to provide legal assistance to other inmates. Shaw v. Murphy, 532 U.S. 223 (2001).

However, it appears that petitioner was providing legal assistance to inmate Steindorf in a "jailhouse lawyer" capacity. It is arguable that jailhouse lawyers have standing to raise claims on behalf of other inmates whose right of access to the courts is infringed when the prison prevents jailhouse lawyers from assisting them. Buise v. Hudkins, 584 F.2d 223, 227 (7th Cir. 1978). But see Gometz v. Henman, 807 F.2d 113, 115 (7th Cir. 1986) (expressing "unease" about the status of Buise given the "latest twists in the law of third-party claims"). However, jailhouse lawyers may not recover monetary damages on such third-party claims. Buise, 584 F.2d at 229. In an order dated March 1, 2005, I noted that petitioner has been released from prison. His release moots his requests for injunctive relief, leaving him only with a claim for money damages. Buise makes monetary damages unavailable as to the third-party claim asserted by petitioner. Therefore, he will be denied leave to proceed on these claims.

2. Refusal to mail adoption papers

Petitioner alleges that respondents Blechl, Schneider and Blotchel refused to mail his adoption documents to a court and that in the course of searching his cell for copies of the documents, respondents confiscated some legal paperwork, which affected several cases in progress at the time. However, petitioner alleges also that he mailed the adoption paperwork to family after leaving respondent Schroeder's office on November 5, 2003. This allegation

suggests that petitioner was not prevented from pursuing his adoption of Steindorf. In addition, his allegation that the confiscation of his legal paperwork "affected" several cases is insufficient to state a claim of denial of access to the courts. Petitioner does not allege that he was impeded or prevented from litigating a non-frivolous case because of respondents' actions. His allegation that several cases were "affected" does not satisfy this pleading requirement. Petitioner will be denied leave to proceed on these claims against respondents Blechl, Schneider and Blotchel.

3. Respondent Radke

Petitioner alleges that respondent Radke refused to process several legal letters and interfered with copies being sent between petitioner and Steindorf. This allegation is insufficient to state a claim for denial of access to the courts because petitioner has not alleged that he suffered any injury above and beyond the fact that his letters were not sent.

4. Respondents Tritt and Cook

I understand petitioner to allege that respondents Tritt and Cook denied him access to the courts. Petitioner alleges that respondents lost his mail, held his legal mail, lost "library copies," denied him legal loans and helped others prevent petitioner and Steindorf from obtaining "outside help," including contact with the courts. In addition to these joint

acts, petitioner makes allegations specific to each respondent. He contends that respondent Cook forced him to pack up his property on June 22, 2004 and that as a result petitioner did not have access to his notes while testifying at a John Doe hearing. Also, he alleges that respondent Tritt delayed mailing petitioner's papers to the court so that he did not have them for the hearing.

Petitioner will be denied leave to proceed on his claims against respondents Cook and Tritt. As noted earlier, an inmate must allege that a prison official's action or lack of action prevented him from litigating a non-frivolous case to state a claim for denial of access to the courts. Petitioner does not allege that respondents Tritt and Cook prevented him from litigating a non-frivolous case by holding or losing his mail and "library copies" and denying him legal loans. (Petitioner has no constitutional right to have the state subsidize his litigation. Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002)). With respect to petitioner's allegations regarding his testimony at a "John Doe hearing," there is no indication that the hearing was part of a case he was litigating. Moreover, petitioner does not allege that respondent Cook or respondent Tritt prevented him from testifying at the hearing, only that their actions resulted in his not having his notes while he testified.

5. Denial of joint library time

Petitioner alleges that respondent Schwochert and the warden denied petitioner and Steindorf joint law library time. By itself, this allegation is insufficient to state a claim of denial of access to courts because petitioner does not allege injury over and above the denial. Specifically, he does not allege that because of his limited library time with Steindorf, a non-frivolous legal action of his was dismissed or the time for filing such an action ran out. Thus, he will be denied leave to proceed on this claim.

C. Conspiracy

1. Respondents Stolarski, Smith, Schwochert and Buechel

Petitioner alleges that respondent Stolarski conspired with the warden, security director and respondent Buechel to affect the court case associated with his adoption of Steindorf. I understand "the warden" to be a reference to respondent Judy Smith and "the security director" to be a reference to respondent Jim Schwochert. Claims of conspiracies to effect deprivations of civil or constitutional rights may be brought in federal court under § 1983. To state a claim of civil conspiracy, plaintiff must "indicate the parties, general purpose, and approximate date, so that the defendant has notice of what he is charged with." Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). Plaintiff has provided the names of the officials alleged to be part of the conspiracy and the general purpose of the alleged conspiracy. He has not provided any indication as to when the conspiracy was

formed, although presumably it did not form before July 23, 2003, the date on which petitioner and Steindorf signed their adoption agreement. In addition, it is not clear from petitioner's allegations which constitutional right he believes respondents conspired to violate because he alleges only that they conspired to "affect the court case associated with the adoption." However, the specific details of the alleged conspiracy may be fleshed out during discovery; for now, construing petitioner's allegations liberally, I conclude that they are sufficient to state a claim. Thus, he will be granted leave to proceed on this claim.

2. Respondents Schwochert and Derringer

According to the complaint, respondents Schwochert and Derringer conspired to interfere with petitioner's adoption proceedings by "creating false transportation costs that petitioner and Steindorf could not pay." Again, petitioner has alleged the parties and the general purpose of the conspiracy. The other allegations regarding petitioner's adoption of Steindorf suggest that the conspiracy was formed some time after July 2003. Thus, I will allow plaintiff to proceed on this claim. However, plaintiff should be aware that to prevail on his conspiracy claims, at a minimum he will have to show an agreement among the respondents to deprive him of his right of access to the courts and that one of the respondents committed an overt act in furtherance of the conspiracy. Scherer v. Balkema, 840 F.2d 437, 442 (7th Cir. 1988).

D. Retaliation

Several of petitioner's allegations raise claims of retaliation. A prison official who takes action in retaliation for a prisoner's exercise of a constitutional right may be liable to the prisoner for damages. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). The official's action need not independently violate the Constitution. Id. To state a claim for retaliation, a prisoner is not required to allege a chronology of events from which retaliation may be inferred, Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002), but he must allege the retaliatory act and describe the protected act that prompted the retaliation. Id. These minimal facts are necessary to give prison officials adequate notice of the claim. Beanstalk Group, Inc. v. AM General Corp., 283 F.3d 856, 863 (7th Cir. 2002).

1. Threatening comments made by respondents Blechl, Schneider and Blotchel

Petitioner alleges that after he wrote letters to the Attorney General, LAIP and the Wisconsin Legal Resource Center about prison officials' interference with the adoption process, respondents Blechl, Schneider and Blotchel threatened him by telling him that they would "make him pay" for trying to file his adoption papers. Although I find this allegation troubling, a critical element of petitioner's retaliation claim is missing because he does not allege that the respondents took any action against him. In the abstract, a threat of retaliation is not actionable. There must be some showing of an actual injury. Lujan v.

Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (stating prerequisites for establishing standing to sue under "case or controversy" requirement of Article III of Constitution). Because petitioner has not alleged a sufficient injury, he will be denied leave to proceed on this claim.

2. Threatening comments made by respondents Jones, Keller and Werner

Petitioner alleges that respondents Jones, Keller and Werner participated in the hearings conducted by the Winnebago County District Attorney's office. He alleges that they told petitioner and inmate Steindorf that they would be found guilty of lying about staff no matter what proof they had because "no one speaks out against staff at OSCI and gets away with it." Again, petitioner fails to allege that these respondents took any action for complaining about staff beyond their words. Therefore, his allegations fail to state a claim for retaliation.

E. Eighth Amendment

Petitioner alleges that he was forced to use a wheelchair from March 27, 2003 to September 14, 2003 because he did not have corrective shoes. He contends that medical staff failed to correct this problem. I understand petitioner to allege that this inaction violated his Eighth Amendment protection against cruel and unusual punishment. The

Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim under the Eighth Amendment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, petitioner must allege facts from which it can be inferred that he had a serious medical need and that prison officials were deliberately indifferent to this need. Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). Attempting to define "serious medical needs," the Court of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371.

Petitioner's allegations are sufficient to permit an inference that he had a serious medical need. He alleges that he was forced to use a wheelchair for almost six months in 2003 because he did not receive corrective shoes. I cannot conclude definitively that petitioner's condition did not constitute a serious medical need, especially in light of the fact that he was rendered unable to walk. In addition, petitioner alleges that medical staff were aware of his need for corrective shoes as early as August 2002 yet failed to act. This is

sufficient to allege deliberate indifference. However, petitioner does not provide the names of the officials who were aware of his need and failed to act. He refers only to "medical staff." Therefore, I will allow petitioner to proceed on this claim against respondent Tom Edwards, who is listed as the director of the Health Services Unit at Oshkosh. Petitioner may proceed against respondent Edwards solely for the purpose of discovering the names of the individuals who were aware of his need for corrective shoes and failed to act.

F. Other Allegations

None of the remaining allegations in petitioner's complaint are sufficient to allege a violation of his constitutional rights. His allegation that his request to be celled with inmate Steindorf was delayed one week because respondent Koonen left for a vacation without notifying respondent Jensen that he had approved the move is legally meritless because inmates do not have a constitutional right to the cell assignment of their choice. Veney v. Wyche, 293 F.3d 726, 733 (4th Cir. 2002) ("decisions relating to the accommodation of inmates, such as cell assignments, are the type of day-to-day judgments that rest firmly in the discretion of prison officials").

Petitioner's allegations that respondent Jensen directed "snide remarks" at him and that respondents Platz, Rasmuson and Gilbertson made life stressful for petitioner and Steindorf and told the inmates that they did not like them are frivolous. Offensive as it may

be, the use of crude and derogatory language by prison officials does not violate the Constitution. DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000) ("Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prisoner equal protection of the laws.").

Petitioner's allegation that respondent Smith told petitioner to put his hand in the trap on his cell door so respondent Smith could break it and prevent petitioner from writing letters is unprofessional, but it does not rise to the level of a constitutional violation. Courts have drawn a line marking the type of threatening conduct and verbal abuse that may violate a prisoner's constitutional rights. Mere threats and bad language are insufficient to state a claim. Oltarzewski v. Ruggiero, 830 F.2d 136 (9th Cir. 1987) (prison official's use of vulgar language did not violate inmate's civil rights); Martin v. Sargent, 780 F.2d 1334 (8th Cir. 1985) (inmate rights not violated by threat that he would have a "bad time" if he refused to cut his hair and shave his beard); Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979) (sheriff's threat to hang prisoner did not violate prisoner's constitutional rights). In the few cases in which threats have be held to be actionable, the threats were either completely unrelated to enforcement of prison regulations or were made while brandishing a weapon. Burton v. Livingston, 791 F.2d 97 (8th Cir. 1986) (prison guard pointed revolver at prisoner, cocked it and told prisoner to run "so I'll be justified"); Douglas v. Marin, 684 F. Supp. 395 (D.N.J. 1988) (staff member's threat to kill prisoner with kitchen knife he was holding was not

"off-the-cuff" remark); see also Walsh v. Brewer, 733 F.2d 473, 476 (7th Cir. 1984) (risk to inmate's safety may violate rights when threats are constant and create "reign of terror"). Petitioner's allegation regarding respondent Smith indicates that his remark was an isolated, off-the-cuff statement that did not lead to any physical injury. Therefore, it is not sufficient to state a claim.

Petitioner's allegations that respondent Ali Fontana refused to help move inmate Steindorf back to P-Building after he was transferred to "Closed North" in August 2003 is frivolous because it fails to implicate any of petitioner's constitutional rights. His allegation that respondent Koonen agreed to move inmate Steindorf back to P-Building but later changed his mind is meritless for the same reason.

Petitioner alleges that respondent Yost, the notary and chief librarian at the Oshkosh facility, refused to notarize his adoption papers. This allegation fails to state a claim because petitioner does not have a constitutional right to receive the services of a notary.

Petitioner alleges that respondents Pierce and Delvaux are inmate complaint examiners whom he included in his "original letter of complaint." He contends that these individuals reviewed the inmate complaints he and Steindorf wrote and "adjusted the words" in the complaints to keep petitioner and Steindorf from obtaining "outside help." Petitioner does not indicate what "outside help" respondents prevented him from obtaining and does not explain how respondents "adjusted" the words of his inmate complaints. Even under a

liberal construction this allegation is too vague to state a claim under any constitutional provision.

Petitioner alleges that respondent Buechel created a false psychological profile and manufactured other documents to portray petitioner and inmate Steindorf as unstable. Assuming this allegation is true, petitioner may have a claim for defamation under state law, but he does not have a constitutional claim.

Petitioner alleges that respondent Monroe was assigned to be his advocate at a disciplinary hearing. He alleges that respondent Monroe refused to gather any evidence or make an effort to present a case on behalf of petitioner. This allegation fails to state a claim because petitioner does not allege facts from which an inference can be drawn that he had a liberty interest requiring due process protections. Sandin v. Conner, 515 U.S. 472, 483-484 (1995) (in prison context, protectible liberty interests generally limited to "freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life"). Even if he could show that a protectible liberty interest was at stake, petitioner has alleged no facts to suggest that he was incapable of presenting his own defense at the hearing. Wolff v. McDonnell, 418 U.S. 539, 570 (1974) (only situation in which inmate may have entitlement to assistance at disciplinary hearing is where he is unable to present evidence).

Petitioner's allegation that respondent Blechl lied when he said that (1) petitioner had

written a letter to the media and (2) he had interviewed everyone about the facts stated in petitioner's complaint is legally meritless because petitioner does not have an independent constitutional right not to have prison officials lie about him.

Petitioner alleges that respondent Schwochert "signed off on all the actions being done under his command" and denied all of petitioner's requests. It is well established that liability under § 1983 must be based on a defendant's personal involvement in the constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). The doctrine of respondeat superior, which allows a supervisor to be held responsible for the acts of his subordinates, does not apply to claims brought under § 1983. Gentry, 65 F.3d at 561; Del Raine, 32 F.3d at 1047; Wolf-Lillie, 699 F.2d at 869. Instead, a prisoner must allege that a supervisor was personally involved in the deprivation of his constitutional rights.

Petitioner's allegation against respondent Schwochert might be sufficient, under a liberal construction, to satisfy the personal involvement requirement. Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985) (prison official sufficiently involved "if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent"). However, petitioner has not identified specific acts that respondent Schwochert

approved or condoned. His bare allegation that respondent Schwochert "signed off on all the actions being done under his command" is not specific enough to put respondent Schwochert on notice of the allegedly unconstitutional acts petitioner believes he approved. Thus, the allegation fails to meet the minimal specificity requirements of Fed. R. Civ. P. 8. Speedy v. Rexnord Corp., 243 F.3d 397, 405 (7th Cir. 2001) (compliant must provide defendant with fair notice of plaintiff's claim). Petitioner will be denied leave to proceed against respondent Schwochert.

Finally, petitioner alleges that he and Steindorf asked to be transferred out of the Oshkosh Correctional Institution for their safety and that their request was denied. For petitioner to make out a claim that his constitutional rights were violated by respondents' failure to protect him from physical harm, he must allege facts from which an inference can be drawn that the respondents were deliberately indifferent to his safety needs. The Eighth Amendment prohibits the infliction of cruel and unusual punishment on convicted persons, Wilson v. Seiter, 501 U.S. 294, 296-97 (1991), and the failure of prison officials to protect an inmate from an assault by another inmate may violate the Eighth Amendment if the officials act with reckless disregard or with deliberate indifference to the prisoner's safety. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985); Smith-Bey v. Hospital Administrator, 841 F.2d 751, 758 (7th Cir. 1988) (prison official violates Eighth Amendment by intentionally exposing prisoner to violence at the hands of another prisoner). Nothing in

petitioner's allegations suggests what danger he believed he was in, whom he told about that danger, or that the person or persons he told turned a blind eye to the danger. His mere allegation that he was denied a transfer when he asked for one falls far short of suggesting that respondents were deliberately indifferent to his safety needs.

ORDER

IT IS ORDERED that petitioner Donald Lee Pippin Jr.'s request for leave to proceed on his claim that an unnamed official refused to send a letter he wrote in violation of his rights under the First Amendment is GRANTED with respect to respondent Judy Smith for the sole purpose of discovering the name of the individual who is allegedly responsible for the refusal. Once petitioner learns the name of the individual directly responsible for refusing to send his letter, he will have to amend his complaint to name that individual as a respondent.

FURTHER, IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis on his claim that medical staff at the Oshkosh Correctional Institution violated his rights under the Eighth Amendment by not obtaining corrective shoes for him is GRANTED with respect to respondent Tom Edwards for the sole purpose of discovering the name or names of the medical staff who are allegedly responsible for violating his Eighth Amendment rights. Once petitioner learns the name or names of the medical staff responsible for failing

to obtain corrective shoes for him, he will have to amend his complaint to name them in place of respondent Edwards.

FURTHER, IT IS ORDERED that

1. Petitioner's request for leave to proceed in forma pauperis is GRANTED on his claims that

a. Respondent Blechl refused to mail his letters to family and friends in violation of his rights under the First Amendment;

b. Respondents Stolarski, Judy Smith, Schwochert and Buechel conspired to deprive him of his constitutional right of access to the courts;

c. Respondents Schwochert and Derringer conspired to deprive him of his constitutional right of access to the courts by creating false transportation costs that petitioner could not afford to pay;

2. Petitioner is DENIED leave to proceed in forma pauperis on all other claims raised in his complaint;

3. This case is DISMISSED with respect to all of the respondents named in petitioner's complaint except respondents Judy Smith, Tom Edwards, Robert Blechl, Dr. Alexander Stolarski, Jim Schwochert, Lt. Buechel and Capt. Derringer;

4. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will

be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. The unpaid balance of petitioner's filing fee is $139.03; petitioner is obligated to pay this amount at such time as he has the ability to do so.

7. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants.

8. Petitioner submitted documentation of exhaustion of administrative remedies with his complaint. Those papers are not considered to be a part of petitioner's complaint. However, they are being held in the file of this case in the event respondents wish to examine

them.

Entered this 6th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge