IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DONALD LEE PIPPIN, JR.
and SHANNON CHARLES STEINDORF,

ORDER

Petitioners,

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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On August 23, 2004, I dismissed this action without prejudice to each petitioner's filing his own separate lawsuit. On September 7, 2004, petitioners appealed from the dismissal 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). In Boriboune, the court held that district courts are required to accept joint complaints filed by more than one prisoner if the criteria of permissive joinder under Fed. R. Civ. P. 20 are satisfied. However, the court observed that there were a number of reasons a prisoner might not want to join in a group complaint filed in federal court.

For example, the court noted that a prisoner litigating on his own behalf takes the risk

that "one or more of his claims may be deemed sanctionable under Fed. R. Civ. P. 11, or may count toward the limit of three weak *forma pauperis* claims allowed by § 1915(g)." Boriboune, 391 F.3d at 854-55. According to the court of appeals, a prisoner litigating jointly assumes those risks for all of the claims in the group complaint, whether or not they concern him personally. Indeed, petitioners may wish to take heed that the court of appeals seems to be suggesting that courts may record strikes against prisoners for each *claim* in a complaint that is dismissed as frivolous or malicious or fails to state a claim upon which relief may be granted.

> Likewise, § 1915(g) limits to three the number of IFP complaints or appeals that were "dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted." This language refers to the complaint or appeal as a whole; thus *when any claim in a complaint or appeal* is "frivolous, malicious, or fails to state a claim upon which relief may be granted," all plaintiffs incur strikes . . . One could imagine situations in which joined *claims* lack overlap, and in which it would be inappropriate to attribute Plaintiff A's claim to Plaintiff B for the purpose of "strikes"; but then joinder may be impermissible under Rule 20 itself, or severance appropriate. When *claims* are related enough to be handled together, they are related enough for the purposes of § 1915(g) as well.

Id. at 855. (Emphasis added.) Because the specific language in § 1915(g) suggests that courts are to issue strikes when an "action or appeal" is dismissed, as opposed to when a particular "claim" in the complaint is dismissed, this court's practice is to issue strikes only when an entire action is dismissed for one of the reasons enumerated in § 1915(g).

However, it may well be that the court of appeals is anticipating a ruling in the future that interprets § 1915(g) as requiring district courts to issue strikes for legally meritless *claims* within an action. Petitioners may wish to take into account this possibility in determining whether to assume the risks of group litigation in the federal courts of the Seventh Circuit.

Perhaps of greatest import to the individual prisoner pro se litigant, the court of appeals held in Boriboune that joint litigation does not relieve any prisoner of the duties imposed upon him under the 1996 Prison Litigation Reform Act, including the duty to pay the full amount of the filing fees, either in installments or in full if the circumstances require it. Id. at 856. This means that before the court will screen the complaint, each petitioner will have to pay either a full filing fee if the petitioner does not qualify to proceed in forma pauperis, or an initial partial payment of the fee calculated pursuant to the method described in 28 U.S.C. § 1915(b). (Because petitioners in this case filed their action before February 7, 2005, they each will owe $150. However, for complaints filed on or after February 7, 2005, the applicable filing fee is $250.)

Because not every prisoner is likely to be aware of the potential negative consequences of joining group litigation in federal courts, the court of appeals suggested in Boriboune that district courts alert prisoners to the individual payment requirement, as well as the other risks prisoner pro se litigants face in joint pro se litigation, and "give them an opportunity to drop out." Id. at 856. In keeping with this suggestion, it is my practice to offer each

petitioner in a group action an opportunity to withdraw from the case before it progresses to the screening stage. In considering whether to continue prosecution of the suit, each petitioner is urged to consider the following factors in making his decision.

1. He will be held legally responsible for knowing precisely what is being filed in the case on his behalf.

2. He will be subject to sanctions under Fed. R. Civ. P. 11 for any pleading, motion or other paper filed over his name if such sanctions are found warranted in any aspect of the case.

3. He will incur a strike if the action is dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted.

4. In screening the complaint, the court will consider whether his claims should be severed and, if it decides severance is appropriate, he will be required to prosecute his claims in a separate action.

5. Whether the action is dismissed, severed, or allowed to proceed as a group complaint, he will be required to pay a full filing fee, either in installments or in full, depending on whether he qualifies for indigent status under §§ 1915(b) or (g).

One final important matter requires attention in this case. This court has learned from the Wisconsin Department of Corrections that petitioner Donald Lee Pippin, Jr. was released from prison on December 14, 2004, and is presently residing in Florida. In

addition, petitioner Shannon Steindorf has been transferred to the Green Bay Correctional Institution. With the exception of a request for reimbursement of costs for litigating this case, petitioners' only requests for relief in their complaint are requests for injunctive relief. Specifically, petitioners request,

> One, we want our records cleared of the conduct reports [at issue in the complaint]. Two, we want our good time restored. Three, we want our proper classification restored and to be transferred immediately to the proper facility for our classification. Four, Mr. Pippin to be immediately released under parole, as he should have been released already, if not for these actions, under his interstate.

To the extent that petitioners seek release or restoration of good time, they cannot bring their claim in a civil suit under 42 U.S.C. § 1983. Their sole remedy is a petition for a writ of habeas corpus under 28 U.S.C. § 2254, after they exhaust their available state court remedies. Preiser v. Rodriguez, 4ll U.S. 475 (l973). In any event, given petitioner Pippin's release from prison, this entire case appears to be moot as to him. As for any claim that remains viable as to petitioner Steindorf, he should be aware that if I cannot decide the issue without calling into question the validity of the loss of his good time credits, then I will have to dismiss that claim under Heck v. Humphrey, 512 U.S. 477 (1994), and require him to raise it in a habeas corpus action, if he chooses to file one.

ORDER

In accordance with the January 28, 2005, decision of the Court of Appeals for the Seventh Circuit, IT IS ORDERED that the August 23, 2004 judgment of dismissal of this action is VACATED.

Further, IT IS ORDERED that petitioner Donald Lee Pippin, Jr. may have until March 18, 2005, in which to show cause why he should not be dismissed from this suit on the ground that his claims are moot. If, by March 18, 2005, petitioner Pippin does not respond to this order, I will dismiss him from the case.

Further, IT IS ORDERED that petitioner Shannon Charles Steindorf may have until March 18, 2005, in which to advise the court whether he wishes to prosecute this action. If, by March 18, 2005, petitioner Steindorf advises the court that he does not wish to prosecute the case, he will be dismissed from the lawsuit and will not be charged a filing fee.

Finally, IT IS ORDERED that if, by March 18, 2005, petitioner Steindorf notifies this court that he wishes to proceed with the action, he must submit a trust fund account statement for the six-month period beginning approximately September 1, 2004 and ending approximately March 1, 2005, so that I may determine his indigent status under 28 U.S.C. § 1915. If, by March 18, 2005, petitioner fails to submit a current trust fund account

statement or show cause for his failure to do so, I will deny his request for leave to proceed in forma pauperis for his failure to show that he qualifies for indigent status.

Entered this 1st day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge