

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

CHARLES LAMONT NORWOOD,

Petitioner,

v.

GARY HAMBLIN,

Respondents.

ORDER

04-C-854-C

This is petitioner's second proposed civil action for monetary and injunctive relief, brought in this court under 42 U.S.C. § 1983 in the past few weeks. Petitioner, who is presently confined at the Dane County jail in Madison, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit and prison account statement petitioner gave the court in connection with his first case, Norwood v. Hamblin, 04-C-813-C, I conclude that petitioner does not have the means to make an initial partial payment of the \$150 filing fee. Nevertheless, petitioner is subject to the 1996 Prison Litigation Reform Act. This means that he will have to pay the \$150 filing fee in installments if and when he begins receiving deposits to his prison account, even if his case is dismissed at the outset.

A court must deny a prisoner's request for leave to proceed in forma pauperis 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 defendant who by law cannot be sued for money damages. In this instance, plaintiff's complaint fails to state a claim upon which relief may be granted.

Reading the allegations of the complaint generously as I must, Haines v. Kerner, 404 U.S. 519, 521 (1972), I understand petitioner to be alleging the following facts.

ALLEGATIONS OF FACT

Petitioner is a prisoner at the Dane County jail. He is indigent. Nevertheless, he has been trying to litigate jail conditions. He has been hampered in these efforts because legal supplies are restricted to four stamped envelopes and a small pad of paper. (Petitioner does not say how often these supplies are provided.) Moreover, petitioner is not allowed free photocopies of legal materials. Petitioner believes that some of his claims in his lawsuits will be dismissed because he does not have enough "postage, copies or other adequate legal necessities" to pursue his claims.

OPINION

Although the state must pay for postage necessary to insure an inmate's access to courts, Bounds v. Smith, 430 U.S. 817, 824 (1977), there is generally "no constitutional entitlement to subsidy." Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002); see also Hershberger v. Scaletta, 33 F.3d 955, 956-57 (8th Cir. 1994) (indigent inmates do not have a right to free postage for personal mail); Van Poyck v. Singletary, 106 F.3d 1558 (11th Cir. 1997) (same); Gaines v. Lane, 790 F.2d 1299, 1308 (7th Cir. 1985) (holding that prisoners "do not have a right to unlimited free postage").

Petitioner contends that respondent's legal supply policy violates his right of access to the courts. As I have already explained to petitioner in his earlier lawsuit complaining of denial of access to the courts because of respondent's refusal to give him grievance forms, the Supreme Court has clarified the elements necessary to state a claim of denial of access to the courts: a petitioner must allege facts from which an inference can be drawn of "actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996). This principle derives ultimately from the doctrine of standing and requires that a petitioner demonstrate that he has been prevented from litigating a non-frivolous case. Id. at 352-53; Walters v. Edgar, 163 F.3d 430, 434 (7th Cir. 1998). A petitioner must plead at least general factual allegations of injury resulting from respondents' conduct or suffer dismissal of his complaint for failure to state a claim upon which relief may be granted. Walters, 163 F.3d at 434.

Petitioner complains that the amount of legal postage and paper he is given, and the inability to obtain free photocopies, prevents him from pursuing lawsuits about prison conditions. However, he has not alleged any facts suggesting that the limited supplies he receives are so inadequate as to actually prevent him from pursuing a non-frivolous suit.

Although it seems unlikely that petitioner can show that he filed a non-frivolous lawsuit about his jail conditions and that the lawsuit was dismissed because of respondent's legal supply policy, the court of appeals has instructed district courts to give a pro se claimant an opportunity to identify the lawsuit he was allegedly prevented from bringing before dismissing his claim of denial of access to the courts. Alston v. DeBruyn, 13 F. 3d 1036, 1041 (7th Cir. 1994) (holding that the lower courts should not deny pro se petitioner leave to proceed without first providing opportunity to particularize claim to conform with governing legal standard). Accordingly, petitioner will have until November 30, 2004, in which to submit a supplement to his complaint, identifying the specific lawsuit he has been unable to pursue because of his allegedly inadequate access to legal supplies.

ORDER

IT IS ORDERED that petitioner may have until November 30, 2004, in which to supplement his complaint to identify the lawsuit he has been unable to pursue and the name of the court in which the suit was filed and dismissed for his failure to litigate the suit

because of his inability to obtain basic legal necessities. If, by November 30, 2004, plaintiff fails to identify the lawsuit he has been prevented from pursuing because of respondent's policy, I will deny petitioner's request for leave to proceed in forma pauperis in this action for his failure to state a claim upon which relief may be granted.

Entered this 18th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge