

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

-----  
DARCE de CORO,

Petitioner,

v.

FRED SIGGLEKOW,

Respondent.

-----

ORDER

04-C-874-C

This is a proposed civil action for monetary and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner Darce de Coro is presently detained involuntarily by the State of Wisconsin at the Mendota Mental Health Institute in Madison, Wisconsin, pursuant to Wis. Stat. § 971.17. He alleges a violation of his rights under the Fourteenth Amendment in connection with his confinement. He seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the fees and costs of starting this lawsuit.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However,

pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief.

In his complaint, petitioner alleges the following facts.

#### ALLEGATIONS OF FACT

For the last six months, petitioner has been confined to a maximum security unit at the Mendota Mental Health Institute because his conditional release was revoked. Respondent Sigglekow, the forensic director of the Mendota Mental Health Institute, has concluded that petitioner may not transfer to a medium security unit at the institution because he is a security risk. Respondent determined that petitioner is a security risk because criminal charges are pending against him. Several patients in the medium security unit have criminal charges pending against them. Petitioner could benefit from several courses of treatment offered in the medium security units, including vocational and psychological treatments and he has no record of violent or major rule infractions at the Mendota Mental Health Institute. Because petitioner cannot obtain a transfer to a medium security unit, he does not have access to treatment available in that unit and his chance of securing a conditional release ahead of his August 2006 mandatory release date has been

greatly reduced or eliminated. Petitioner's placement in a maximum security unit is contrary to his right to be held in the least restrictive confinement conditions.

## DISCUSSION

I understand petitioner to allege that respondent Sigglekow is violating petitioner's rights under the equal protection clause of the Fourteenth Amendment. Petitioner alleges that he is being housed in a maximum security unit because criminal charges are pending against him but other patients at the Mendota Mental Health Institute against whom criminal charges are pending are allowed to live in medium security conditions. Petitioner alleges further that he is considered mentally stable and has no record of violent rule infractions while at Mendota.

The equal protection clause of the Fourteenth Amendment guarantees that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). In this case, petitioner's allegations do not show that he is similarly situated to the patients with pending criminal charges who are allowed to live in medium security conditions. Although petitioner alleges that, like the medium security patients, he has a pending criminal case, petitioner does not indicate what charge or charges he is facing and what charges the patients allowed in medium security units are facing. Without this information, I am unable to determine whether petitioner is similarly situated

to the patients in medium security. Rather than denying petitioner leave to proceed on his claim, I will give him two weeks to submit a supplement to his complaint that explains what criminal charges are pending against him and what charges are pending against those patients allowed to live in medium security conditions.

ORDER

IT IS ORDERED that petitioner Darce de Coro has until January 5, 2005 to submit a supplement to his complaint containing information about what criminal charges are pending against him and what charges are pending against those patients allowed to live in medium security conditions. If petitioner fails to submit a supplement by January 5, 2005, he will be denied leave to proceed for failure to state a claim on which relief may be granted.

Entered this 21st day of December, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge