

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

CINDY O'DONNELL, SANDRA
HAUTAMAKI, JOHN RAY,
PETER HUIBREGTSE, GERALD BERGE,
SGT. S. GRONDIN, C.O. D. ESSER,
KELLY TRUMM, C.O. JOHNSON,

Defendants.

ORDER

05-C-04-C

Petitioner Nathaniel Lindell has filed a motion pursuant to Fed. R. Civ. P. 59(e), to alter or amend the judgment entered in this case on March 3, 2006, dismissing his case following a jury verdict in defendants' favor. In his motion, plaintiff contends that the court "mangled the claims, ignored the facts and hacked the law" throughout the course of his case. Specifically, plaintiff contends that the court (1) improperly granted summary judgment on his claim that defendants violated his First Amendment rights by refusing to give him stamps mailed to him by his family and friends and using a mail-opening process that periodically resulted in damage to plaintiff's incoming mail; (2) erred when it upheld

defendants' decision to dismiss various administrative grievances plaintiff filed as untimely; (3) "totally ignored [plaintiff's] arguments" when it found that defendants' confiscation of a magazine with a missing label was an acceptable response to a legitimate prison security concern; and (4) improperly granted defendants qualified immunity for refusing to allow plaintiff to possess copies of documents from inmates' personal Web sites and for defendant Esser's decision to discipline plaintiff for threatening to file an inmate complaint against Esser. With one exception, plaintiff's complaints are simply re-argument of issues he has raised previously and to which the court has responded in detail.

Plaintiff has raised one new argument regarding his claim that defendants violated his First Amendment rights when they confiscated a letter he wrote to Glynda Soeterbien on October 20, 2003, and issued him a conduct report based upon the content of the letter. Plaintiff contends that the court erred by granting summary judgment to defendants on this claim in light of the fact that defendants acknowledged error by reversing plaintiff's conduct report through the prison appeal process. Plaintiff analogizes his case to Koutnik v. Berge, 2004 WL 1629548, *3 (W.D. Wis. 2004).

In Koutnik, prison officials confiscated a letter the plaintiff had written and disciplined him because he had signed the letter using a nickname prison officials alleged was gang-related. Id. The plaintiff appealed the disciplinary decision to no avail through the prison's administrative appeal process. Id. Eventually, the decision was overturned on a writ

of certiorari to the Wisconsin circuit court. Id. After Koutnik succeeded in state court, he filed an action in this court under 42 U.S.C. § 1983, seeking monetary damages for the actions of prison officials. Ultimately, this court granted summary judgment in favor of the plaintiff on his claim that prison officials had violated his First Amendment right to free speech. Id. at *10.

Although there are some similarities between the facts of plaintiff's case and those of Koutnik's, the difference between them is that in Koutnik's case, prison officials did nothing to correct their initial error. Koutnik was forced to take his case beyond the prison administration and to the Wisconsin circuit court in order to obtain relief from the disciplinary decision. In plaintiff's case, prison officials reversed the disciplinary decision against plaintiff at the first level of his administrative appeal. As I explained in the summary judgment decision,

Prison officials recognized their error in failing to post plaintiff's letter and vacated the conduct report he received in connection with the letter. Therefore, to the extent plaintiff is seeking a declaration that the letter was mistakenly seized, he has already been given redress. Second, to the extent that plaintiff is seeking the return of his letter, he has apparently obtained a copy already, since he attached a photocopy of the letter to the affidavit he submitted in response to defendants' motion for summary judgment. Finally, to the extent he seeks the return of the stamped envelope in which the letter was submitted, plaintiff is making a property deprivation claim, not a First Amendment claim. If plaintiff wishes to obtain his confiscated property from prison officials, the proper avenue for redress is state court.

Under the Prison Litigation Reform Act, incarcerated plaintiffs are required to exhaust their

administrative remedies before bringing suit in federal court. The purpose of the exhaustion requirement is to allow prison officials the opportunity to correct their mistakes and resolve prisoners' complaints without judicial intervention. Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 537-38 (7th Cir. 1999) (purpose of exhaustion to narrow dispute and avoid litigation). In this case, prison officials did just what the law anticipated. Having been given redress through the administrative process, plaintiff cannot obtain further relief in this court. Because plaintiff has not shown that the court erred in granting summary judgment to defendants on this claim or any other, his motion to alter or amend judgment will be denied.

ORDER

IT IS ORDERED that plaintiff's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) is DENIED.

Entered this 6th day of April, 2006.

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