

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

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TITUS HENDERSON,

Plaintiff,

v.

BRIAN KOOL,

Defendant.

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ORDER

05-C-157-C

This action was commenced in April 2005, after I granted plaintiff leave to proceed in forma pauperis on his claim that defendant Brian Kool denied him a promotion to security level three in retaliation for plaintiff's assertion that he had been transferred to the Wisconsin Secure Program Facility because he had sued Redgranite Correctional Institution. Subsequently, I allowed plaintiff leave to amend his complaint to assert a claim against Judith Huibregtse, alleging that on September 5, 2004, Judith Huibregtse opened and read outside plaintiff's presence a letter from the United States Supreme Court labeled in red "Open in Presence of Inmate" and that on November 10, 2004, she opened and read a letter from the Center for Constitutional Rights labeled "Legal Mail . . . Open in Presence of Prisoner." I noted that ordinarily, communications between an inmate and his attorney and

some types of mail from “public officials” such as a United States Senator, had been found entitled to special protection. Martin v. Brewer, 830 F.2d 76, 78 (7th Cir. 1987); see also Castillo v. Cook County Mail Room Dept., 990 F.2d 304, 306-07 (7th Cir. 1993) (per curiam) (allegation that prisoner's letters from court and Department of Justice were opened outside his presence stated a claim upon which relief could be granted). I cautioned plaintiff, however, that in the end, he might not prevail on his mail censorship claim if defendant Huibregtse was to show that his mail was opened as the result of negligence or that the mail was not protected legal mail. Kinkaid v. Vail, 969 F.2d 594, 602 (7th Cir. 1992) (plaintiff must prove more than negligence to succeed under § 1983); Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996) (“prison employees can open official mail sent by a court clerk to an inmate without infringing on any privacy right”); Keenan v. Hall, 83 F.3d 1083, 1094 (9th Cir. 1996) (“Mail from the courts, as contrasted to mail from a prisoner's lawyer, is not legal mail.”).

Now plaintiff has filed a proposed second amended complaint. In this newest proposed amended pleading, plaintiff realleges his claim that defendant Huibregtse opened a letter from the Center for Constitutional Rights on November 10, 2005 and that on September 5, 2004, she opened and read a letter from the United States Supreme Court. However, he adds to these two instances of alleged improper mail handling allegations that on July 13, 2005, defendant Huibregtse opened and read outside his presence a letter from

this court.

Plaintiff's assertion that he suffered a recent third instance of having his "legal" mail opened and read outside his presence does not add any substance to his claim against defendant Huibregtse. Mail to plaintiff from this court is not privileged legal mail. It is a matter of public record that anyone may view plaintiff's case files. Thus, plaintiff cannot argue that his First Amendment right to grieve is being chilled simply because prison officials read the communications as they enter the prison.

Plaintiff appears also to be attempting to raise in his proposed second amended complaint a claim of constitutional wrongdoing with respect to his outgoing mail against additional new proposed defendants. In particular, he alleges that in June 4, 2004, he was made to leave unsealed pleadings he was sending to Sheriff Gary Hamblin for service on defendants in another of his cases, 04-CV-1289; on May 25, 2005, he was prohibited from sealing outgoing mail to the Food and Drug Administration Paralegal Specialist; and less than a month ago, on July 28, 2005, he was refused permission to bypass inspection of a sealed letter to Secretary of Defense Donald Rumsfeld. In addition, he claims that since January 2003, he has been required to submit unsealed and open for inspection all correspondence to family and friends.

At this stage of the proceedings, I am not willing to allow plaintiff to add new parties and a new claim concerning his outgoing mail. The deadline for the parties to file dispositive

motions on plaintiff's existing claims is only a little more than two months away. Plaintiff should focus his attention on collecting evidence to prove his retaliation claim against defendant Kool and his First Amendment claim against defendant Huibregtse. (In addition, plaintiff should be preparing for the August 22, 2005 trial of another of his cases, Henderson v. Belfueil, 03-C-729-C.) If plaintiff wants to sue prison officials for their handling of his outgoing mail, he is free to file a new lawsuit. I will not permit resolution of this case to be delayed by allowing plaintiff to revise the scope of his claims a second time.

ORDER

IT IS ORDERED that plaintiff's motion for leave to file a second amended complaint is DENIED.

Entered this 17th day of August, 2005.

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