

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

STATE OF WISCONSIN ex rel.
ALEJANDRO RIVERA,

Plaintiff,

v.

GERALD BERGE,

Defendant.

ORDER

05-C-260-C

Plaintiff Alejandro Rivera is an inmate at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. In March 2005, plaintiff filed a petition for a writ of certiorari under Wisconsin common law in the Circuit Court for Dane County. In the petition, plaintiff seeks judicial review of the following decisions: (1) the Wisconsin Department of Corrections' decision to transfer him from the Douglas County Jail to the Wisconsin Secure Program Facility on March 2, 2000, the same day that petitioner was sentenced to life in prison by the Circuit Court for Douglas County; (2) the decision of the facility's Administrative Confinement Review Committee to assign him to the facility's administrative confinement unit on April 4, 2000; and (3) the committee's September 22, 2004 decision

to keep plaintiff in administrative confinement. He requests a declaration that these decisions were made in violation of his rights under state and federal law and an injunction ordering his placement in “the general population.”

On April 29, 2005, defendant Gerald Berge removed the action to this court pursuant to 28 U.S.C. §§ 1441 and 1446. I construe the petition as a complaint for declaratory and injunctive relief under 42 U.S.C. § 1983. Having reviewed the complaint, I understand plaintiff to raise two claims under federal law, along with an assortment of state law claims. First, plaintiff argues that his due process rights were violated when he was transferred from the Douglas County Jail to the Secure Program Facility immediately after his sentence was imposed. Second, he contends that the Secure Program Facility’s Administrative Confinement Review Board violated his due process rights by considering the nature of the offense of which plaintiff was convicted in making the decision to place him in administrative confinement. (Defendant suggests also that plaintiff has raised a federal law claim because he alleges that his placement in administrative confinement unit violates the settlement agreement approved by this court in Jones ‘El v. Berge, 00-C-421-C. This allegation appears in a footnote in the petition; therefore, I do not understand plaintiff to be raising this issue as a separate claim.)

Defendant has paid the filing fee. However, because plaintiff is a prisoner, his complaint must be screened pursuant to 28 U.S.C. § 1915A. The complaint must be

dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief.

Plaintiff's due process claims will be dismissed as legally frivolous. In Rivera v. Berge, 01-C-423-C, plaintiff challenged the lack of process he received before he was transferred to the Secure Program Facility and before he was placed in administrative confinement at the facility. In that case, I dismissed plaintiff's due process claims as legally frivolous because I concluded that "[p]risoners do not have a liberty interest in not being transferred from one institution to another" or "in remaining out of segregation status so long as that period of confinement does not exceed the remaining term of their incarceration. Id. at 9-10 (citing Meachum v. Fano, 427 U.S. 215 (1976) and Wagner v. Hanks, 128 F.3d 1173 (7th Cir. 1997)). Plaintiff did not appeal that decision.

Three years later, plaintiff raised the same due process claims against defendant Berge in another lawsuit, Rivera v. Berge, 04-C-252-C. In that case, which began in the Circuit Court for Dane County and was removed to this court by defendant, I dismissed plaintiff's due process claims on the ground that they were barred by the doctrine of claim preclusion and remanded his state law claims to state court.

The present action is in all material respects a repeat of the 2004 case. Plaintiff filed an action in the Circuit Court for Dane County that defendant has removed to this court.

In his complaint, plaintiff raises the same due process claims against defendant that he raised in the 2001 and 2004 cases, in addition to several state law claims. Plaintiff is still barred from bringing his due process claims by the doctrine of claim preclusion. Because his federal claims will be dismissed, I decline to exercise supplemental jurisdiction over plaintiff's state law claims. They will be remanded to the Circuit Court for Dane County.

ORDER

IT IS ORDERED that

1. Plaintiff Alejandro Rivera's claims that his due process rights were violated when he was (1) transferred from the Douglas County Jail to the Secure Program Facility immediately after his sentence was imposed and (2) placed in administrative confinement in part on the basis of the nature of the offense of which he was convicted are DISMISSED as legally frivolous because I dismissed plaintiff's same claims on their merits in Rivera v. Berge, 01-C-423-C; and

2. Plaintiff's state law claims are REMANDED to the Circuit Court for Dane County. Although the circuit court has not yet provided this court with the full record of this case, the clerk of court is directed to return it to the circuit court as soon as it arrives in

this court.

Entered this 6th day of May, 2005.

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