

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

MICHAEL HILL,

Petitioner,

v.

STEVE ROBINSON, M. MOORE
and MICHAEL KLAWITTER,

Respondents.

ORDER

05-C-347-C

This is a proposed civil action for injunctive relief, brought under Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). Petitioner, who is presently confined at the Federal Corrections Institution in Oxford, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner has made the initial partial payment required under § 1915(b)(1).

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

litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed 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. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Michael Hill is a federal inmate incarcerated at the Federal Corrections Institution in Oxford, Wisconsin. At the Oxford facility, respondent Steve Moore is a unit manager, respondent M. Moore is a lieutenant and respondent Michael Klawitter is a counselor.

At some point before April 14, 2005, petitioner filed an administrative complaint

against respondent Klawitter. All three respondents retaliated against petitioner for pursuing this complaint by placing him in segregated confinement. Petitioner has been in segregated confinement since April 15, 2005. Respondents have attempted to justify their actions by asserting that petitioner lied in his complaint.

DISCUSSION

A prison official who takes action in retaliation for a prisoner's exercise of a constitutional right may be liable to the prisoner for damages. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). Otherwise lawful action "taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). To state a claim for retaliation, a petitioner need not allege a chronology of events from which retaliation could be plausibly inferred. Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002). However, he must allege sufficient facts to put the respondents on notice of the claim so that they can file an answer. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). This minimal requirement is satisfied where a petitioner specifies the protected conduct and the act of retaliation. Id.

As for petitioner's constitutionally protected activity, he alleges that he filed an administrative complaint against respondent Klawitter. Although petitioner does not identify the wrongdoing that he alleged in the body of his complaint, he has attached a

document titled “Federal Bureau Prison Staff” which I assume is a copy of his administrative complaint. This document contains allegations that respondent Klawitter wrongfully seized petitioner’s stamps, radio, watch and wallet. “Prisoners’ grievances, unless frivolous, concerning the conditions in which they are being confined are deemed petitions for redress of grievances and thus are protected by the First Amendment.” Hasan v. United States Dept. of Labor, 400 F.3d 1001, 1005 (7th Cir. 2005) (additional citations omitted).

In addition, petitioner has specified the alleged act of retaliation on which he grounds his claim, namely his placement in segregated confinement. Petitioner’s allegations suggest that respondents may have placed him in segregation not because he filed a grievance but because they believed he lied in the grievance. If this proves true, petitioner’s claim will fail. A prison official does not violate inmate’s First Amendment rights by punishing him for lying, even in the context of an inmate complaint. Id. At this early stage in the litigation, however, it would be premature to draw conclusions about respondents’ motives. Accordingly, I will grant petitioner leave to proceed on his First Amendment retaliation claim.

ORDER

IT IS ORDERED that

1. Petitioner Michael Hill’s request for leave to proceed in forma pauperis is GRANTED on his claim against respondents Steve Robinson, M. Moore and Michael

Klawitter violated his first amendment rights by placing him in segregated confinement in retaliation for his pursuing an administrative grievance against respondent Klawitter.

2. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

3. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. The unpaid balance of petitioner's filing fee is \$181.61; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

5. The court will arrange for service of petitioner's complaint on respondents.

Entered this 29th day of July, 2005.

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