

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

TIMOTHY ALI, AMONTE JACKSON,
DARRELL CAMPBELL and MIGUEL
SEGARRA,

Petitioners,

v.

MILWAUKEE COUNTY JAIL, SHERIFF
DEPARTMENT, DAVID A. CLARKE, Sheriff,
KEVIN CARR, Deputy Inspector and
RICHARD R. SCHMIDT, Deputy Inspector,

Respondents.

ORDER

05-C-363-C

This is a proposed civil action for declaratory, injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. It began more than four months ago with a complaint that named sixteen prisoners as petitioners. A series of orders from this court has reduced the number of prisoner petitioners to four. Petitioners Timothy Ali and Darrell Campbell are presently confined at the Milwaukee County jail in Milwaukee, Wisconsin, and petitioners Amonte Jackson and Miguel Segarra are confined at the Dodge Correctional Institution in Waupun, Wisconsin. They ask for leave to proceed under the in forma pauperis statute, 28

U.S.C. § 1915. From the financial affidavits petitioners have given the court, I conclude that each petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner Ali has made the initial partial payment required under § 1915(b)(1). Petitioner Jackson's trust fund account statement revealed that he does not have the means to make an initial partial payment. Nonetheless, he will be responsible for paying the full \$250 fee in installments pursuant to 28 U.S.C. § 1915(b)(2) whenever he has the means to do so.

After having been dismissed from this case for failing to respond to a court order, petitioners Campbell and Segarra sent trust fund account statements to the court along with letters requesting permission to rejoin this suit in early August 2005. In an order dated August 17, 2005, I granted their request and assessed them initial partial payments. In an order dated October 11, 2005, Magistrate Judge Crocker extended the deadline for them to submit their initial partial payments to October 21, 2005 because it appeared that neither prisoner had received the August 17 order. It is now well beyond the extended deadline set by Judge Crocker and neither prisoner has submitted their initial partial payment. This case has languished on the court's docket for more than four months. I am unwilling to grant any further extensions or to postpone screening of the complaint in this case any longer. Therefore, I will consider the failure of petitioners Campbell and Segarra to submit their initial partial payments as a indication that they wish to voluntarily dismiss their actions. Petitioners Campbell and Segarra will be dismissed from this action and the court will screen

the allegations in the complaint that pertain to petitioners Ali and Jackson. However, petitioners Campbell and Segarra each remain obligated to pay the full \$250.00 filing fee for their respective actions.

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.

Most of the allegations in the complaint concern inmates who are no longer parties in this case. I have not considered those allegations. From the remaining allegations, I understand petitioners to be alleging the following.

ALLEGATIONS OF FACT

The Milwaukee County jail has a policy of not distributing inmate mail on Mondays. The jail is the only institution in Wisconsin that limits the rights of citizens to receive mail Mondays through Saturdays. On June 15, 2005, petitioner Ali filed a grievance with

respondents Milwaukee County jail and Milwaukee Sheriff's Department regarding certified legal mail from the United States Drug Enforcement Agency concerning receipt of a notice of forfeiture proceeding. Petitioner Ali was in jeopardy of losing a substantial amount of property because he had to reply within 30 days of receiving the notice. The notice sent to him at the jail was delayed for an unknown period of time. The jail's mail log indicates that the notice was logged on June 13, 2005 but not delivered to petitioner until June 15.

DISCUSSION

I understand petitioners to allege that respondent Milwaukee County Jail's policy of not distributing inmate mail on Mondays violates their rights under the First Amendment and the equal protection and due process clauses of the Fourteenth Amendment.

A. First Amendment

Prison inmates and pretrial detainees have a constitutional right to send and receive mail while incarcerated. Thornburgh v. Abbott, 490 U.S. 401 (1989). However, this right may be circumscribed by restrictions that are "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). Denial of mail or lengthy, repeated delays in receiving mail may be serious enough to implicate constitutional concerns but the Court of Appeals for the Seventh Circuit has held that short-term delays are not serious

enough to do so. Sizemore v. Williford, 829 F.2d 608, 610 (7th Cir. 1999). In this case, the most that can be inferred from petitioners' allegations is that they might not receive mail until one or two days after it is delivered to the jail. Indeed, the only specific example of a delay in receiving mail provided by petitioners was two days. Petitioners have not given any indication that petitioner Ali was unable to file a timely response to the forfeiture notice. Even though the delays are the result of a jail policy, they are short-term and similar to other delays that the Court of Appeals for the Seventh Circuit has found insufficient to state a claim under the First Amendment. Zimmerman v. Tribble, 226 F.3d 568, 573 (7th Cir. 2000) (allegation that prison had routine practice of not processing mail timely not enough to state claim); Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). Because petitioners' allegations are insufficient to state a claim, they will be denied leave to proceed on this claim.

B. Equal Protection

Lawful imprisonment deprives convicted prisoners of many rights, but not the right to equal protection of the laws. Williams v. Lane, 851 F.2d 867, 871 (7th Cir. 1988) (citing Lee v. Washington, 390 U.S. 333 (1968)). 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). Petitioners allege that they are the only group of people in Wisconsin who are not allowed to receive mail Mondays

through Saturdays. Petitioners' allegations are insufficient to state a claim under the equal protection clause because they are not similarly situated to members of the general public with respect to mail delivery. They will be denied leave to proceed on this claim.

C. Due Process

To state a due process claim, an inmate must allege that prison officials have deprived him of a protected liberty or property interest with adequate procedures. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). Petitioners' allegations regarding the jail's mail distribution policy are insufficient to state a due process claim because petitioners have not alleged deprivation of a protected liberty or property interest. Although prison inmates do retain a property interest in their mail, petitioners have not alleged that their mail is being withheld indefinitely or delayed for a substantial amount of time. At worst, the jail's policy of not delivering mail on Mondays results in a short-term delay that does not implicate due process concerns. Petitioners will be denied leave to proceed on this claim.

D. Strikes

Because the allegations in the complaint fail to state a claim upon which relief may be granted, I must issue strikes pursuant to 28 U.S.C. § 1915(g). When a prisoner signs a

group complaint, he vouches for the validity not only of his own action but the validity of the actions of his co-plaintiffs as well. If one or more of those actions warrant a strike, then he and all the other prisoners who sign the complaint must accept responsibility for bringing the meritless action. Each prisoner will receive a strike for each action within the complaint for which the court has found a lack of lacks legal merit or that fails to state a claim upon which relief may be granted. Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004). I have examined the actions of petitioners Ali and Jackson on their merits and have concluded that neither action states a claim upon which relief may be granted. Therefore, I will assess two strikes each to petitioners Ali, Jackson, Campbell and Segarra. Because petitioners Campbell and Segarra voluntarily dismissed their actions before I could consider their individual claims on their merits, petitioners will not receive additional strikes for those actions.

ORDER

IT IS ORDERED that

1. Petitioners Timothy Ali and Amonte Jackson are DENIED leave to proceed in forma pauperis in their actions alleging violations of their First Amendment, due process and equal protection rights. These actions are DISMISSED with prejudice for petitioners' failure to state a claim upon which relief may be granted;

2. Petitioner Ali's unpaid balance of his filing fee is \$229.00 and the unpaid balance

of the filing fee for petitioners Amonte Jackson, Darrell Campbell and Miguel Segarra is \$250.00. These amounts are to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);

3. Two strikes will be recorded against each of petitioners Timothy Ali, Amonte Jackson, Darrell Campbell and Miguel Segarra pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 3rd day of November, 2005.

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