

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

KENNETH VALENTINE AWE,

 Petitioner,

ORDER

06-C-34-C

v.

GRANT COUNTY JAIL SHERIFF
KEITH GOVIER; CHIEF DEPUTY
JACK JOHNSON; SUPERVISOR
JOANN KOOLLER,

Respondents.

Once again, petitioner Kenneth Awe has written to say that he cannot pay the \$8.35 initial partial payment of the fee for filing this case that he was directed to pay, because he has no money in his account at the present time. Petitioner contends that if he receives any money, Grant County “will take any and every dollar . . . until [his] medical bill is paid.” Although petitioner did not submit an updated trust fund account statement with his letter, I note that as of January 30, 2006, the last deposit made to his account was on December 20, 2005 in the amount of \$12.01. By December 22, 2006, plaintiff’s account balance was zero and it remained so through the end of January, when the statement ends. The

statement shows also that the few deposits made to petitioner's account between October 12, 2005, when petitioner was first incarcerated, and January 30, 2006, were sporadic window deposits and not from steady income. Accepting as true petitioner's contention that he is presently destitute, I find that he qualifies for pauper status under 28 U.S.C. § 1915(b)(4), which states,

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

Therefore, I will screen petitioner's complaint pursuant to 28 U.S.C. § 1915(e)(2). In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See 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.

In his complaint, petitioner alleges the following facts.

Petitioner Kenneth Valentine Awe is a prisoner at the Grant County jail. Respondent Grant County jail is a penal facility. Respondent Keith Govier is the sheriff of Grant

County; respondent Jack Johnson is a chief deputy and respondent Joann Kooller is a supervisor.

On October 12, 2005, petitioner was prohibited from putting an ounce of paper in an envelope bearing sufficient postage under the rules of the United States Postal Service for a one ounce mailing. Pursuant to jail policy,

all outgoing mail may contain up to four pages of mail per envelope. . . If the letter contains more than 4 pages the letter will be returned to the inmate. The only exceptions to this rule will apply to any legal mailings and in this case extra postage will be deducted from the inmate's account as needed.

OPINION

Contrary to petitioner's belief, he does not have a right under federal laws or the United States Constitution to put a set number of pages in a mailing envelope or to bring the weight of an envelope up to the maximum weight allowed for a 39¢ stamp. Prison officials are free to limit the number of pages of material an inmate may receive or send in the mail in order to reduce the volume of materials they must screen for contraband. Lindell v. Frank, 377 F.3d 655, 660 (7th Cir. 2004). Even if petitioner's indigency makes it impossible for him to purchase as many stamps as he needs to send more than four pages of communication to persons outside the jail, respondents have no obligation under the Constitution to provide him postage for this purpose. Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002)(generally "no constitutional right to subsidy" in prison); Van Poyck v.

Singleton, 106 F.3d 1558 (11th Cir. 1997) (indigent inmates do not have right to free postage for personal mail); Hersberger v. Scaletta, 33 F.3d 955, 956-57 (8th Cir. 1994) (same). The First Amendment is not violated by the fact that prison policies and petitioner's indigency may combine to prevent him from corresponding as prodigiously as he would wish. Accordingly, petitioner will not be allowed to proceed on his claim in this case because it is legally meritless.

ORDER

IT IS ORDERED that:

1. Petitioner Kenneth Valentine Awe's request for leave to proceed in forma pauperis on his First Amendment claim is DENIED and this case is DISMISSED with prejudice because petitioner's claim is legally meritless;
2. The unpaid balance of petitioner's filing fee is \$250; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);
3. A strike will be recorded against petitioner pursuant to § 1915(g); and
4. The clerk of court is directed to close the file and to insure that the court's financial

records reflect that petitioner owes the \$250 for filing this complaint.

Entered this 3rd day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge