

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

KENNETH VALENTINE AWE,

Petitioner,

ORDER

v.

06-C-162-C

GRANT COUNTY JAIL and
GRANT COUNTY SHERIFF'S DEPARTMENT,

Respondents.

In this proposed civil action for declaratory and injunctive relief under 42 U.S.C. § 1983, petitioner Kenneth Valentine Awe, a prisoner at the Grant County jail in Lancaster, Wisconsin, contends that respondents are violating his equal protection rights by refusing to purchase televisions for all jail inmates.

Petitioner requests leave to proceed in forma pauperis, as authorized by 28 U.S.C. § 1915. In an order dated March 31, 2006, I directed petitioner to make an initial partial payment of \$6.21 toward the cost of the filing fee in this case as required under § 1915(b)(1). Petitioner responded with a letter to the court in which he asserted that he lacks the means to make any payment. After noting that petitioner had received a deposit

to his account as recently as March 16, 2006, I declined to waive petitioner's initial partial payment under 28 U.S.C. § 1915(b)(4), and instead extended the deadline for making the initial payment to May 22, 2006. Order dated Apr. 13, 2006, dkt. #4, at 2.

Now, petitioner has responded with a second letter, postmarked April 18, 2006, in which states emphatically that he has no income and no means of making any payment at this time or at any time in the foreseeable future. Accepting as true petitioner's contention that he is destitute and likely to remain so, I am satisfied that petitioner presently has no means with which to pay an initial partial payment of the \$250 fee for filing his complaint. (Petitioner submitted his complaint to this court on March 29, 2006, before the filing fee was raised to \$350 on April 9, 2006.) Although I am waiving petitioner's initial partial payment, he should be aware that he will remain obligated to pay the full filing fee. 28 U.S.C. § 1915(b)(1). His account will be monitored and the fee must be taken in monthly installments when the funds exist.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when the litigant is a prisoner, the court must dismiss the complaint if the claims contained in it are legally frivolous, malicious, fail to state a claim upon which relief may be granted or seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

Petitioner's complaint reads as follows:

Grant County Jail Administration allows one inmate per cell block to own and have a tv and not the other inmates in the same cell blocks, giving one inmate a right or privilege that others do not get. The right or privilege to own and operate a t.v. to watch what ever each one wants. I feel that it is discrimination for one inmate to be allowed to own property in the jail when others can not be afforded the same. I want the policy of inmate ownership of tvs to end and for the county jail to provide the tv so that no one inmate owns the t.v.

Attached to petitioner's complaint is a copy of the Grant County jail rules. The rule pertaining to televisions reads as follows:

Inmates are to furnish their own television set, which may not be any larger than 19" and not have an internal VCR unit.

The only type of antenna allowed is the rabbit ear type. At this time cable connection is provided to all cells.

THE TELEVISION SET MUST BE BRAND NEW AND IN THE ORIGINAL SHIPPING CARTON AND RECEIVED AT THE JAIL UNOPENED. The shipping carton must be taken out with the person who delivered the television or it will be destroyed. **NO REMOTES[.]**

Inmates must sign a waiver stating that the jail is not responsible should any damage occur to the set. If the above conditions are not met, the set will not be allowed in the jail.

Set may not be loaned to another block. Television sets are to be taken out when the owner is released from custody.

The radio is furnished by the jail through an in house sound system. No other radio of any type will be allowed.

The staff will control both the radio and the TV, They will be turned on upon request (not by pounding or yelling for in [sic]) and turned off at lockup.

Any pounding, yelling or covering the camera for radio or TV will result in the loss of it.

There is no constitutional right to watch television. Murphy v. Walker, 51 F.3d 714,

718 n. 8 (7th Cir.1995); James v. Milwaukee County, 956 F.2d 696, 699 (7th Cir.1992) (“a prisoner who is denied . . . a television set has not set out a deprivation of [his rights under] . . . the Eighth Amendment”); Davis v. Lawson, 2005 WL 2293752, *4 (N.D. Ind. 2005). Nevertheless, once a government institution decides to confer a privilege not required by law, it must do so even handedly.

The equal protection clause of the Fourteenth Amendment secures individuals against intentional and arbitrary discrimination by the government. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Although equal protection claims are most commonly brought by individuals alleging that the government has discriminated against them because of their race, religion, gender or other protected class status, courts have recognized that successful equal protection claims may be brought by a “class of one,” when a plaintiff shows that he “has been intentionally treated differently from others similarly situated without a rational basis for the difference in treatment.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). If jail officials *arbitrarily* authorized some inmates to own television sets while denying that privilege to others, they would violate the equal protection clause.

However, petitioner does not allege that prison officials are acting arbitrarily. The attachment to his complaint reveals that any inmate is allowed to own a television so long as it is no larger than 19”, does not have an internal video cassette recorder, and is received at the jail new and in its original shipping container. Although some inmates may be able

to afford new television sets while others cannot, jail officials are not obligated to buy television sets for indigent prisoners. As the Court of Appeals for the Seventh Circuit has made clear, “there is no constitutional entitlement to subsidy.” Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002).

The right to publish a newspaper does not imply a right to governmental funding, nor does a right to read books imply entitlement to a public library that circulates books without charge . . . A right to education does not imply a right to free transportation to school. A right to petition for redress of grievances does not imply a right to free writing paper and stamps.

Johnson v. Daley, 339 F.3d 582, 586 (7th Cir. 2003) (internal citations omitted).

So long as prison officials are applying their policy evenhandedly to all inmates (and petitioner does not allege that they have failed to do so), they are not violating petitioner’s equal protections rights, even if the consequence of the policy is that some inmates are able to purchase more property than others. Because petitioner has not shown that jail officials are violating his right to equal protection by failing to purchase televisions sets for all inmates, his request to proceed in forma pauperis will be denied.

One final word of caution. In less than six months’ time, petitioner has accumulated two strikes under 28 U.S.C. § 1915(g) as a result of filing two frivolous lawsuits. Cf. Case No. 06-C-034-C. Section 1915(g) prohibits courts from permitting a prisoner to file lawsuits or appeals in forma pauperis when

the prisoner has, on three or more prior occasions, while incarcerated or

detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Petitioner is perilously close to the three strike cutoff which would bar him from filing future lawsuits, meritorious or not, unless he prepays the full filing fee or is found to be in immediate danger of serious physical injury. To avoid this penalty, before filing any further lawsuits, petitioner should do his best to insure that any claims he wishes to raise state a claim of constitutional proportions or are actionable under some other federal law.

ORDER

IT IS ORDERED that

1. Petitioner's second motion for reconsideration of the court's March 31, 2006 order is GRANTED;
2. Petitioner's request to proceed in forma pauperis is DENIED;
3. 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);
4. A strike will be recorded against petitioner pursuant to § 1915(g); and

5. 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 1st day of May, 2006.

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