

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

KENNETH VALENTINE AWE,

Petitioner,

v.

GRANT COUNTY JAIL and
GRANT COUNTY SHERIFF'S DEPARTMENT,

Respondents.

ORDER

06-C-162-C

In an order dated May 1, 2006, I denied petitioner Kenneth Awe's request to proceed in forma pauperis on his claim that respondents were violating his equal protection rights by refusing to purchase televisions for all jail inmates because the Constitution does not require prison officials to purchase luxury items for indigent prisoners. However, I noted that although

[t]here is no constitutional right to watch television . . . once a government institution decides to confer a privilege not required by law, it must do so even handedly . . . If jail officials *arbitrarily* authorized some inmates to own television sets while denying that privilege to others, they would violate the equal protection clause.

Dkt. #6, at 3-4.

Now before the court is petitioner's timely filed motion to alter or amend judgment under Fed. R. Civ. P. 59(e), in which petitioner asserts that I misconstrued his claim. According to petitioner, his complaint was not that prison officials would not purchase a television for him, but that once he purchased it, they would not allow him to use it. Petitioner explains that when he alleged that "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," dkt. #2, at 1, he did not mean that only one person in his cell block owned a television, or even that prison officials limited televisions to one per cell, but rather that if any person in a group of cells (that is, a "cell block") has a television, then no other prisoner in the cell block may own a television. Petitioner does not indicate what justification respondents have offered for this policy and none is readily apparent. Therefore, accepting as true petitioner's allegation (which, at this stage of the proceedings, I must do), I find that petitioner has alleged sufficient facts to proceed on his equal protection claim.

One matter remains. Petitioner has named as respondents the Grant County jail and the Grant County Sheriff's Department. Neither of these are "persons" within the meaning of 42 U.S.C. § 1983 and therefore may not be sued under the statute. However, the Grant County Sheriff, is the official responsible for jail policies; therefore, he is a proper defendant under § 1983. When examining the allegations in a pro se litigant's complaint, the claims

raised must be construed broadly. Haines v. Kerner, 404 U.S. 519, 521 (1972). Therefore, I will grant petitioner leave to proceed against the Grant County Sheriff on his equal protection claim. Future captions in this case will be updated accordingly.

ORDER

IT IS ORDERED that

1. Petitioner's motion to alter or amend the judgment entered in this case on May 1, 2006, is GRANTED and the judgment is VACATED;
2. Petitioner's request to proceed in forma pauperis is GRANTED with respect to his claim that respondent Grant County Sheriff has violated his right to equal protection by arbitrarily permitting some inmates to own a television while denying others the same privilege;
3. Respondent Grant County jail is dismissed from this lawsuit;
4. Respondent Grant County Sheriff's Department is DISMISSED but the Grant County Sheriff is SUBSTITUTED as a respondent;
5. The strike recorded against petitioner pursuant to § 1915(g) in this case is RESCINDED; and
6. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will

be representing respondent, he should serve the lawyer directly rather than respondent. 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.

7. 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.

8. The unpaid balance of petitioner's filing fee remains \$250; petitioner is obligated to pay this amount when he has the means to do so, as described in 28 U.S.C. § 1915(b)(2).

9. The clerk of court has prepared a Marshal's service and summons form for the respondent sheriff and is forwarding a copy of petitioner's complaint and attached forms to the marshal for service on respondent.

Entered this 19th day of May, 2006.

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