IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KENNETH VALENTINE AWE,

Plaintiff, OPINION and ORDER

v. 06-C-162-C

KEITH GOVIER, Grant County Sheriff,

Defendant.

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Plaintiff Kenneth Awe is a prisoner at the Red Granite Correctional Institution in Red Granite, Wisconsin. In this civil action for injunctive relief, he contends that when he was incarcerated at the Grant County jail in Lancaster, Wisconsin, defendant Keith Govier violated his right to equal protection by promulgating and enforcing jail policies that arbitrarily permit some inmates to own a television while denying others the same privilege.

Now before the court is defendant's motion for summary judgment, in which defendant contends that plaintiff's claim should be denied as moot. Because plaintiff is no longer confined at the Grant County jail, his request for injunctive relief (the only relief requested in his complaint) is moot. Therefore, defendant's motion will be granted.

Although plaintiff was given a copy of this court's summary judgment procedures, he

failed to comply with them in responding to defendant's proposed findings of fact. With respect to several proposed facts, plaintiff tried to dispute them by asserting contradictory information, but did not submit any affidavit or other admissible evidence in support of the alleged disputes. Consequently, the following facts are drawn from defendant's proposed findings of fact alone.

UNDISPUTED FACTS

A. Parties

Plaintiff Kenneth Awe is an inmate at the Red Granite Correctional Institution in Red Granite, Wisconsin. From October 12, 2005 to April 27, 2006, plaintiff was confined at the Grant County jail in Lancaster, Wisconsin.

Defendant Keith Govier is Sheriff of Grant County, Wisconsin.

B. Television Policy

The policies of the Grant County jail apply to all inmates, irrespective of their race, sex or national origin. The jail maintains a policy of permitting only one television on each cell block. In each cell block, only one inmate may display his television at any time. (If other inmates on the cell block have television sets, they are allowed to store them in the jail's storage area.) As a condition of displaying his television, the inmate must agree to

place the television in a common area where it may be watched by all inmates. (For security reasons, in the medium and maximum security areas of the jail, the television is placed on a stand located behind bars in the common area.) The inmates are required to decide among themselves the programs they will watch.

The jail prohibits each inmate from possessing his own television set for several reasons. First, televisions and television cords may be used as weapons to harm staff or other inmates. In the past, an inmate at the jail used part of a television set as a weapon and severely injured another person. Approximately ten years ago, inmates escaped from the jail after attacking and seriously injuring staff. When the inmates were apprehended, they were carrying broken pieces of television sets, which they planned to use as weapons.

Moreover, the jail is not equipped to hold more than one television set. Each cell block has only one cable and electrical outlet and only one stand will fit behind the bars in the common area. In the past, the jail provided televisions for each cell block, but stopped doing so because the television sets were continually destroyed. Budget cutbacks made it impossible to continue repairing the television sets.

Plaintiff did not own a television when he arrived at the Grant County jail. At some point during his confinement, he acquired a television from another inmate. When plaintiff was transferred to the medium security wing of the prison, he was no longer able to display his television. However, he could have stored it in the jail's storage facility or convinced

other inmates in his cell block that his television was the one that ought to be displayed.

C. Complaint

On March 31, 2006, plaintiff filed his complaint in this lawsuit, alleging that defendant had violated his right to equal protection by prohibiting him from displaying his television while permitting other inmates to do so. In his complaint, plaintiff described his request for relief in this way: "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 tv." He did not request monetary relief.

OPINION

"When a prisoner who seeks injunctive relief for a condition specific to a particular prison is transferred out of that prison, the need for relief, and hence the prisoner's claim, become moot." Lehn v. Holmes, 364 F.3d 862, 871 (7th Cir. 2004). In this lawsuit, plaintiff has challenged the Grant County jail's policy on television ownership, requesting relief in the form of injunctive relief only. Because he is no longer confined at the jail, his complaint is moot "unless he can demonstrate that he is likely to be retransferred." Higgason v. Farley, 83 F.3d 807, 811 (7th Cir. 1996) (citing Moore v. Thieret, 862 F.2d 148, 150 (7th Cir. 1988)). Allegations of his likely return must be more than speculative.

Id. (citing Preiser v. Newkirk, 422 U.S. 395, 403 (1975)).

As explanation why his claim is not moot, plaintiff asserts that he has "unresolved legal issues in the Grant County Courts, relating to Grant County Court case no. 2005CF000126." (Although it not entirely clear, plaintiff appears to be suggesting that he will be confined at the jail while awaiting future court hearings in Case No. 2005CF000126.) A review of documents attached to plaintiff's summary judgment submissions and publicly available court records reveals that plaintiff pleaded no contest to the criminal charges against him in Case No. 2005CF000126 on March 12, 2006. He was sentenced to two years' confinement in state prison on April 26, 2006. No appeal is pending.

In Higgason, 83 F.3d at 811, the court of appeals upheld a district court's decision to dismiss an inmate's complaint as moot when the inmate failed to show he would be transferred back to the institution where his lawsuit had arisen. The court explained:

> Higgason stated in response to the summary judgment motion that "upon his release from disciplinary segregation [at WVCI], his return to the parent institution from whence he came [ISP] is a virtual certainty." However, such an allegation does not amount to a "showing" or a "demonstration" of the likelihood of retransfer; Higgason has not pointed to anything in the record supporting his estimate of "virtual certainty."

Similarly, in this case, plaintiff has not adduced evidence showing that he is likely to be returned to the Grant County jail any time in the foreseeable future. Therefore, defendant's motion for summary judgment will be granted and plaintiff's complaint will be dismissed as

moot.

Although I need not reach the merits of plaintiff's claim, I will note for plaintiff's benefit that had his claim not become moot, it would have stood little chance of success. Defendant's policy would be constitutional so long as defendant had a rational basis for implementing it. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (class of one plaintiff must show that he "has been intentionally treated differently from others similarly situated without a rational basis for the difference in treatment"). By explaining the security and budgetary concerns that led the jail to implement the policy, defendant has done more than enough to meet that minimal burden.

ORDER

IT IS ORDERED that defendant Keith Govier's motion for summary judgment is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 8th day of December, 2006.

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