

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

JAMES J. KAUFMAN,

Plaintiff,

v.

ORDER

06-C-205-C

THOMAS E. KARLEN; RANDALL R. HEPP;
CYNTHIA L. O'DONNELL; RICHARD RAEMISCH;
DANIELLE LACOST; PERRY NICHOLS, and
APRIL OLIVERSON, and their
employees, agents and representatives,

Defendants.

In an order dated July 13, 2006, I granted plaintiff James J. Kaufman, a prisoner at the Jackson Correctional Institution in Black River Falls, Wisconsin, leave to proceed against defendants on his claims that they violated his First and Eighth Amendment rights in myriad ways. In the same order, I denied him leave to proceed on a number of additional claims against these and other proposed defendants. Now before the court is plaintiff's motion for reconsideration, in which he takes issue with the court's decision to dismiss those claims.

Although I will not reiterate matters discussed at length in the July 13 opinion, a few

points raised in plaintiff's motion merit brief attention. Specifically, I address the following three points:

1. On page 2 of his motion, plaintiff contends that the court erred when it construed his challenge to the prison's ban on free publications as an establishment clause challenge to the ban's exception for religious materials. See dk. #4, at 50. Plaintiff asserts that he intended to challenge not only the policy's exceptions, but the policy itself, which he contends violates his right to free speech by arbitrarily denying him published materials sent to him free of charge. A prison policy limiting inmates' access to reading material will be held constitutional so long as it is an unexaggerated response to legitimate penological interests. Beard v. Banks, 126 S. Ct. 2572, 2578 (2006) (citing Turner v. Safley, 482 U.S. 78, 87 (1987)). In this case, petitioner contends that the Wisconsin Department of Corrections has no legitimate penological interest in prohibiting inmates from receiving almost all free publications. At this stage in the proceedings petitioner has alleged enough to state a claim under the First Amendment. Petitioner alleges that defendants Nichols, Oliverson, Hepp, Karlen, Raemisch and unidentified prison staff members enforced the allegedly unconstitutional policy by prohibiting him from receiving free publications on April 17, 2003, May 7, 2003, October 21, 2003, November 11, 2003, December 7, 2003, January 1, 2004, January 25, 2004, and February 12, December 19, 2004, January 27, 2005, January 31, 2005, February 19, 2005, March 13, 2005, January 23, 2005, June 20, 2005, and

August 23, 2005. Because plaintiff alleges that these defendants were personally involved in depriving him of his constitutional rights, he will be granted leave to proceed against them on his claim that, by enforcing the prison's ban on free publications, they deprived him of his right to free speech.

2. In light of the decision to grant plaintiff leave to proceed on his challenge to the prison's ban on free publications, I will grant plaintiff's request for leave to proceed against former defendant Matthew Frank on this claim. As Secretary of the Wisconsin Department of Corrections, Frank is a proper defendant to a claim that he has implemented an unconstitutional policy. See, e.g., Sanville v. McCaughtry, 266 F.3d 724, 740 (7th Cir. 2001) ("To be held individually liable, a defendant must be "personally responsible for the deprivation of a constitutional right."). However, defendant Frank is not a proper defendant to plaintiff's remaining claims, all of which challenge the allegedly wrongful manner in which legitimate prison policies were implemented.

3. At the conclusion of his motion, plaintiff writes:

Conspiracy claims

Though Kaufman presented these claims, the court does not address the issue at all. Clarification is needed.

It is not clear to me what plaintiff is requesting. In ¶ 121 of his complaint, plaintiff contends that when defendant LaCost and Karlen issued him conduct reports allegedly because he tried to write to the clerk of the Wisconsin Supreme Court and because he requested access to law library materials, they violated plaintiff's

right of access to the courts, to access attorney assistance, to free speech, to equal protection, to procedural due process, to substantive due process, and constitute issuance of false disciplinary charges, in retaliation for Kaufman's seeking access to the courts; constitute a conspiracy to harm Kaufman for attempting to enforce the right to equal protection; and further constitute violations of DOC 303, DOC 309, DOC 309 IMP #29, DOC 309 IMP #34 and DOC 310.

Dkt. #2, at 26. Plaintiff made similar allegations of conspiracy with regard to defendant LaCost's decision not to mail a letter plaintiff proposed to send using the prison's fund for postmarking indigent prisoner's legal mail. Id. at 25. Using the word conspiracy in a complaint is not enough to state a claim. After analyzing plaintiff's allegations, I found that he had stated a claim for retaliation against defendants LaCost and Karlen. He did not state a claim for conspiracy.

ORDER

IT IS ORDERED that

1. Petitioner James J. Kaufman's motion for reconsideration of this court's July 13, 2006 order is GRANTED in part and DENIED in part. Petitioner is GRANTED leave to

proceed on his claim that former defendant Matthew Frank and defendants Nichols, Oliverson, Hepp, Karlen, Raemisch and unidentified prison staff members violated his right to free speech by enforcing prison policies prohibiting him from receiving free publications. In all other respects, petitioner's motion for reconsideration is DENIED.

2. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint, this order and all preceding orders in this case are being sent today to the Attorney General for service on defendant Frank.

Entered this 1st day of September, 2006.

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