

without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit.¹

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, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief. Petitioner will be denied leave to proceed in forma pauperis because he has failed to state a federal cause of action in his complaint. Because petitioner has not stated a federal claim, I decline to exercise supplemental jurisdiction over his state law claims.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Kenneth Ray Parrish is a patient at Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Respondents are employed at Sand Ridge: Steve Watters is the

¹Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

director; Steve Schneider is the security director; David Thornton is the treatment director; and Tim Thomas is a unit manager.

On March 23, 2005, petitioner was placed in the segregation unit at Sand Ridge. Two days later, a detective questioned petitioner regarding the allegations of a patient named Sustman that petitioner had hit, bit and forced Sustman to engage in oral sex with petitioner. Petitioner told the detective that on March 23 he had seen Sustman in class, at which time Sustman told petitioner that security officers had asked him whether petitioner had hit, bit and forced him to engage in oral sex with petitioner; Sustman told the officers in a written statement that petitioner had not done so. No charges were brought against petitioner concerning his alleged attack on Sustman.

After petitioner told an administrator that Sustman was his “gay lover,” petitioner was put back in segregation for fourteen days without access to mental health care, his job, school or church services.

OPINION

A. Federal Constitutional Violations

_____ Although it is far from clear, it appears that petitioner is alleging that his constitutional right to procedural due process was denied when he was “falsely accused” of sexual misconduct; that his right to equal protection was violated when he was placed in

segregation as harassment for his sexual orientation; and that he was deprived of mental health care for the fourteen-day period he was in segregation in violation of the Eighth Amendment. However, petitioner has not alleged any facts suggesting that one or more of the named respondents were involved personally in any of the alleged constitutional wrongdoings.

As an initial matter, I note that the Eleventh Amendment denies federal courts the authority to entertain suits brought by private parties against a state without its consent. Quern v. Jordan, 440 U.S. 332, 337 (1979). Therefore, petitioner will be denied leave to proceed against respondent State of Wisconsin.

Petitioner alleges in his complaint that “Sand Ridge” placed him in segregation without due process and that “the administrative” [sic] punished him for being gay. He does not allege who denied him mental health treatment for a two-week period, although he claims broadly that his rights were violated by “state officials, agencies and/or departments and their agent/employees.” From these statements, I understand petitioner to be suing respondents Watters, Schneider, Thornton and Thomas because they are assigned supervisory responsibility for the individuals who accused him of misconduct, harassed him for his sexual orientation and denied him mental health care.

The Court of Appeals for the Seventh Circuit has held that to recover damages under 42 U.S.C. § 1983, a petitioner must establish each respondent’s personal responsibility for

the claimed deprivation of a constitutional right. A respondent may be liable when he directly participates in the deprivation, although direct participation is not required. An official satisfies the personal responsibility requirement “if she acts or fails to act with a deliberate or reckless disregard of petitioner’s constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge or consent.” Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985); Crowder v. Lash, 687 F.2d 996, 1005 (7th Cir. 1982). In order for a supervisory official to be found liable under § 1983, there must be a “causal connection, or an affirmative link, between the misconduct complained of and the official sued.” Smith, 761 F.2d at 369; Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). The doctrine of respondeat superior, under which a superior may be liable for a subordinate’s tortious acts, does not apply to claims under § 1983. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Petitioner has not alleged facts suggesting how any of the respondents were directly or indirectly involved in the alleged constitutional deprivations. Because petitioner has not identified as respondents the individuals who participated personally in allegedly denying him his constitutional rights, I will deny petitioner leave to proceed in forma pauperis on his claims brought under § 1983.

B. Conspiracy

Petitioner contends that there was a “conspiracy to interfere with Civil Rights under

42 USC 1985.” Cpt. ¶ 9. He does not specify what the alleged conspiracy entailed or which provisions of § 1985 were violated. The only portions of § 1985 that petitioner could conceivably invoke are the second clause of § 1985(2) or § 1985(3), which cover general equal protection violations (§ 1985(1) applies to violations of rights of United States employees and the first clause of § 1985(2) applies to violations of rights during court proceedings). The second clause of § 1985(2) and § 1985(3) both require proof of a racial or otherwise class-based discriminatory animus behind the defendants’ actions. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993); Griffin v. Breckenridge, 403 U.S. 88 (1971), Williams v. St. Joseph Hospital, 629 F. 2d 448, 451 (7th Cir. 1980).

The only portion of petitioner’s complaint that could be read as a class-based allegation is his statement that he was placed in segregation after he revealed to an administrator that he was a homosexual. However, to state a claim under § 1985, petitioner would have to allege facts suggesting that a conspiracy occurred (a conspiracy under § 1985 requires two or more individuals acting in concert to deprive petitioner of his rights). Petitioner has alleged no facts suggesting that two or more respondents acted in concert to deprive him of any rights. Therefore, I will deny petitioner leave to proceed on his § 1985 claim.

C. Federal Statutes

In his complaint (paragraph 10), petitioner lists four federal statutes under which his

rights were allegedly violated: “Persons with Disabilities Act,” “Federal Fair Labor Standards Act,” “Patient and Civil Rights Protection,” and “Rehabilitation Act.” I assume that by “Persons with Disabilities Act” petitioner meant the Americans with Disabilities Act. I am not aware of a law called “Patient and Civil Rights Protection” (petitioner cites 42 U.S.C. § 1331, which is the repealed Reconversion Unemployment Benefits for Seamen Act and 42 U.S.C. § 1343, which does not exist).

Petitioner did not allege how his rights under these statutes were allegedly violated and I can discern no violation. While petitioner is not expected to provide elaborate legal arguments in the complaint, he also cannot merely name a number of statutes and expect the court to peruse the entire text of each statute to determine whether any of its clauses were potentially violated. Petitioner will be denied leave to proceed on his claim that his federal statutory rights were violated.

D. State Law Claims

The existence of supplemental jurisdiction is predicated on the existence of a substantial federal claim and a common nucleus of operative fact as to state and federal claims such that the claims would ordinarily be tried in one proceeding. Mine Workers v. Gibbs, 383 U.S. 715 (1966). Because I am denying petitioner leave to proceed on all of his federal claims, I will decline to exercise supplemental jurisdiction over his state law claims.

ORDER

IT IS ORDERED that

1. Petitioner Kenneth Ray Parrish's request for leave to proceed in forma pauperis is DENIED as to all of his claims.

2. The clerk of court is directed to close the file.

Entered this 2d day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge