

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

JOEL FLAKES,
#027179
Stanley Correctional Institution,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS and
CORRECTIONS CORPORATION OF AMERICA,
PAMELA WALLACE, Warden, Stanley Correctional
Institution; JEROME SWEENEY, Unit Manager;
Correctional Officer SGT. DORF; MS. PEGGY
MEYER, Education Director; MS. STACEY BIRCH,
Librarian; MR. LYNCH, ADA steering committee
member and classification specialist,

Respondents.

Petitioner Joel Flakes, a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, has filed a proposed complaint for money damages and a request for leave to proceed in forma pauperis. However, on three or more occasions in the past, while petitioner was a prisoner, he brought an action or appeal in a court of the United States that was dismissed on the ground that it was legally frivolous or failed to state a claim upon

which relief may be granted. See, Flakes v. Endicott, 94-C-046-C, decided Feb. 7, 1994, Flakes v. Fiedler, 93-C-493-C, decided Aug. 6, 1993; and Flakes v. Fiedler, 93-C-493-C, appeal decided Dec. 8, 1993. Therefore, he does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g) unless his complaint concerns a matter suggesting he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

The vast majority of petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. Petitioner claims that 1) the Wisconsin Department of Corrections and Corrections Corporation of America violated the Racketeer Influence and Corrupt Organizations Act, 18 U.S.C. § 1964, by “export[ing] slaves and/or human cargo from state to state for personal financial gain”; 2) the contract between the Wisconsin Department of Corrections and Corrections Corporation of America was unauthorized; 3) when he was transferred into the custody of Corrections Corporation of America in March 1998, defendants should have known that he needed health care he would be unable to get in a Corrections Corporation of America facility; 4) while he was housed in a Corrections Corporation of America facility in Whiteville, Tennessee, defendants failed to arrange for him to receive hip replacement surgery; 5) now that he is housed at the Stanley Correctional Institution, defendants Jerome Sweeney and Sgt. Dorf have failed to accommodate plaintiff's request to have a cell closer to the showers so that he does not have to “travel the entire length of the dayroom

practically naked in full view of the social workers, other SCI staff at the officers' station, staff and guest visitors to the unit and the other ninety-five inmates on the unit which draws cat calls and whistles" which is humiliating; 6) defendants Sweeney's and Dorf's refusal to move petitioner to a cell closer to the showers "because of personality differences between staff and [plaintiff]" is discriminatory and retaliatory; 7) the Stanley Correctional Institution has denied job opportunities to plaintiff "as a means of retaliation, vindictiveness, discrimination and bias for his 1985 conviction and many institutional complaints"; and 8) defendant Meyer has turned down plaintiff ten times for the position of unit law clerk even though he is qualified for the job and this defendant had a Ms. Birch write a conduct report on plaintiff so that he would be disqualified for the job.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, slip op. 01-2657, (7th Cir. Dec. 11, 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Ordinarily, claims of physical injury arise in the context of lawsuits alleging Eighth Amendment violations. Here, however, the vast majority of petitioner's Eighth Amendment claims are for wrongdoings that occurred well in the past, while he was confined at the Whiteville, Tennessee facility. In his request for relief, petitioner seeks

hundreds of thousands of dollars in compensatory and punitive damages, general injunctive and declaratory relief covering all “acts and omissions as described” in petitioner’s complaint, and “that this court . . . order . . . WDOC and CCA to make all necessary arrangements for surgery”

With respect to all but the last request, I can conceive of no factual scenario under which petitioner faces imminent danger of a serious physical injury. With respect to the last request, petitioner has not offered any factual information in his complaint to suggest who at the Stanley Correctional Institution is responsible for his medical care, whether his present doctor has ordered hip replacement surgery or refuses to do so, and, if surgery has been recommended, who is presently denying the surgery, if anyone.

Because the vast majority of petitioner’s complaint is not a complaint requiring application of the exception to § 1915(g), and because petitioner does not appear to have named any respondent in connection with the one possible claim warranting an exception, that is, his claim concerning his alleged present need for hip surgery and his inability to obtain it, I am denying petitioner leave to proceed in forma pauperis without prejudice to his filing an amended complaint. If he chooses to file an amended complaint, petitioner is directed to limit his complaint to his claim that he is in dire need of hip replacement surgery, and name as respondents only those persons who are presently personally involved in denying him the surgery.

Alternatively, petitioner may choose to pursue this case in its entirety as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$350 and he must do so no later than August 3, 2006. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not file an amended complaint as described above or pay the \$350 filing fee by August 3, 2006, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$350 filing fee and I will advise the warden of the Stanley Correctional Institution of petitioner's obligation to pay the fee so that the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g) with respect to all of his claims except his claim that he is presently being denied hip replacement surgery. Petitioner's request for leave to proceed in forma pauperis on his

claim regarding hip replacement surgery is denied because he has not articulated any facts concerns the claims or named as a respondent any individual who is personally involved in denying him surgery.

Further, IT IS ORDERED that petitioner may have until August 3, 2006, in which to file an amended complaint raising his claim concerning his present need for hip replacement surgery only, or to submit a check or money order made payable to the clerk of court in the amount of \$350. If, by August 3, 2006, petitioner fails to pay the fee, the clerk of court is directed to close this file. However, even in that event, the clerk of court is to insure that petitioner's obligation to pay the \$350 fee for filing this case is reflected in this court's financial records and that the warden of the Stanley Correctional Institution is advised of petitioner's obligation to pay the fee pursuant to 28 U.S.C. § 1915(b)(2).

Entered this 17th day of July, 2006.

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