

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

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DAVID DAHLER,

Plaintiff,

v.

MEMORANDUM and ORDER

C. THORSON,

06-C-390-S

Defendant.

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Plaintiff David Dahler was allowed to proceed on his due process claim that defendant C. Thorson failed to follow procedures concerning contraband.

On November 3, 2006 defendant Thorson filed a motion to dismiss plaintiff's complaint. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

## FACTS

For purposes of deciding defendant's motions to dismiss the facts alleged in plaintiff's complaint are taken as true.

Plaintiff David Dahler is an inmate at the Federal Correctional Institution, Oxford, Wisconsin (FCI-Oxford). Defendant C. Thorson is a correctional officer at FCI-Oxford.

On June 28, 2005 C. Thorson confiscated pack of chewing tobacco from plaintiff's locker. She did not follow the Bureau of Prisons policy, Program Statement 5880.06, which requires that she provide plaintiff with a Confiscation and Disposition of Contraband Form.

## MEMORANDUM

Plaintiff claims that he was deprived of his property without due process in violation of the Fourteenth Amendment. He claims that defendant Thorson took his property without completing a Confiscation and Disposition of Contraband Form.

An action for a federal claim for a denial of procedural due process will not lie if the officer's conduct was random and unauthorized and an adequate state post-deprivation remedy exists. Zinermon v. Burch, 494 U.S. 113, 132 (1990). Where Officer Thorson did not follow the proper procedure, the deprivation of plaintiff's property was unauthorized.

Plaintiff had adequate post deprivation remedies including the grievance procedure which he utilized. The fact that he could not

get monetary relief from the grievance procedure does not make it inadequate. See Booth v. Charter, 532 U.S. 631 (2001). Plaintiff has an adequate post-deprivation remedy which he utilized. Accordingly, plaintiff has not been deprived of his Fourteenth Amendment due process rights and defendant's motion to dismiss will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that defendant's motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 5<sup>th</sup> day of December, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge