

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

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DWAYNE ALMOND,

ORDER

Petitioner,

v.

06-C-447-C

STATE OF WISCONSIN; GREGORY GRAMS;  
MATHEW FRANK; MS. JANEL NICKEL;  
CAPT. SEAN SALTER, Unit Clerk;  
MR. MIKE VANDERBROOK, Clinical;  
MS. DR. JANET WALSH, Clinical Service;  
MR. LT. SCHOENEGER; MR. LT. STRUPP;  
and MR. CO II WECH,

Respondents.  
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This is a proposed civil action for monetary relief under 42 U.S.C. § 1983. Petitioner Dwayne Almond, an inmate at the Wisconsin Resource Center in Winnebago, Wisconsin, contends that respondents violated his constitutional rights under the Eighth Amendment of the United States Constitution when they served him moldy bread on the morning of December 15, 2005.

In an order dated August 18, 2006, I concluded that petitioner does not have the means to make an initial partial payment of the filing fee and that his request for leave to

proceed in forma pauperis in this case and in five other cases would be taken under advisement. In this order, I will consider whether petitioner's complaint in this case should be dismissed on the ground that the action is legally meritless, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

In his complaint, petitioner alleges the following facts.

## ALLEGATIONS OF FACT

### A. Parties

Petitioner Dwayne Almond is a prisoner at the Wisconsin Resource Center in Winnebago, Wisconsin.

Respondent Gregory Grams is Warden of the Columbia Correctional Institution in Portage, Wisconsin.

Respondent Matthew Frank is Secretary of the Wisconsin Department of Corrections.

Respondent Dr. Janet Walsh is supervisor of the clinical services unit of the Columbia Correctional Institution.

Respondents CO II Wech, Lieutenant Schoenberg and Lieutenant Strupp are correctional officers at the Columbia Correctional Institution.

(Petitioner does not identify the respective positions of respondents Janel Nickel,

Captain Sean Salter and Mike Vanderbrook.)

B. Moldy Bread

\_\_\_\_\_On the morning of December 15, 2005, while petitioner was incarcerated at the Columbia Correctional Institution, respondent Wech served him a piece of moldy bread that had been toasted. When respondent Wech returned to petitioner's cell to collect the meal tray after breakfast, petitioner showed him the bread. Respondent Wech responded by telling petitioner, "Give me the moldy bread and we will talk about it later." Petitioner insisted that a supervisor be called. Respondent Schoenberg was summoned to the unit. After examining petitioner's meal tray, Schoenberg acknowledged that the bread was moldy. Respondent Schoenberg expressed displeasure that the bread had been distributed and ordered that an incident report be written and sent to food services. Later, when petitioner filed an inmate grievance complaining about the incident, the inmate complaint examiner found no evidence that respondent Wech had ever written the incident report as respondent Schoenberg had directed him to do.

OPINION

In order to state a claim under the Eighth Amendment, petitioner must allege acts from which it may be inferred that prison officials subjected him to conditions that were

“sufficiently serious” to endanger his health or safety and the respondents knew they were placing him in harm’s way. Farmer v. Brennan, 511 U.S. 825, 834 (1994). In this case, petitioner alleges that, on a single occasion, he was given a meal containing a piece of moldy toast. According to petitioner, he brought the matter to the attention of correctional officers, who removed the toast before petitioner ate it. Petitioner has not alleged any facts from which it may be inferred that prison officials deliberately fed him moldy food or that his health was jeopardized by his one-time receipt of a piece of bread he did not eat. Because it is clear that petitioner cannot prove “any set of facts . . . consistent with the[se] allegations,” DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000), which would entitle him to relief on his Eighth Amendment claim, his request for leave to proceed in forma pauperis will be denied.

#### ORDER

IT IS ORDERED that

1. Petitioner Dwayne Almond’s request for leave to proceed in forma pauperis is DENIED with respect to his claim that respondents State of Wisconsin, Gregory Grams, Matthew Frank, Dr. Janet Walsh, CO II Wech, Lieutenant Schoenberg, Lieutenant Strupp, Janel Nickel, Captain Sean Salter and Mike Vanderbrook violated his Eighth Amendment rights by serving him a moldy piece of toast on the morning of December 15, 2005.

2. The unpaid balance of petitioner's filing fee is \$350.00; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

3. A strike will be recorded against petitioner under 28 U.S.C. § 1915(g).

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

Entered this 23d day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge