

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

DWAYNE ALMOND,

Petitioner,

v.

STATE OF WISCONSIN; GREGORY GRAMS;
MR. MATHEW FRANK; MS. JANEL NICKEL,
Secretary-Dir.; CAPT. SEAN SALTER, Unit Clerk;
MR. MIKE VANDERBROOK, Clinical; and
MS. DR. JANET WALSH, Supervisor, Clinical Ser.,

Respondents.

ORDER

06-C-449-C

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 by keeping him in a foul-smelling cell block .

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 some or all of 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.

(Petitioner does not identify the positions of respondents Janel Nickel, Captain Sean Salter or Mike Vanderbrook.)

B. Cell Block Conditions

On January 25, 2006, at approximately 4:00 a.m., petitioner struck up a conversation

with Sergeant Morrison, a prison guard working the third shift. The two men discussed petitioner's complaint that prison staff members were doing nothing to stop inmates Richard Spears and Guillermo Gabonles from repeatedly pouring feces mixed with urine into the hallway of the cell blocks through the cracks in their cell doors. The prisoners referred to this behavior as "chemical warfare." Petitioner complained about having to endure the constant stench of the urine and fecal matter.

Plaintiff filed an inmate complaint about the problem. Respondent Nickel investigated the complaint and falsely responded that the behavior had stopped. In fact, on March 7, 2006, Captain Johnson had to remove Spears from the cell block for renewing his attempts at "chemical warfare."

OPINION

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). However, prison conditions, alone or in combination, that do not fall below the contemporary standards of decency, are not unconstitutional, and "[t]o the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." Id.; see also Farmer v. Brennan, 511 U.S. 825, 835

(1994). Put another way, “the Constitution does not mandate that prisons be comfortable.” Caldwell v. Miller, 790 F.2d 589, 601 (7th Cir. 1986). As long as conditions do not fall below contemporary standards of decency, they are not unconstitutional. Id.;

In this case, petitioner alleges that he was confined for a period of at least three months on a cell block that smelled of urine and feces. Petitioner alleges that respondent Nickel was aware of the problem, but that nothing was done to remedy it until several months after he filed an inmate complaint. If true, petitioner’s allegations indicate that he was confined in unpleasant conditions during the late winter and early spring of 2006. However, petitioner’s allegations do not permit the inference to be drawn that he was subjected to conditions that amount to cruel and unusual punishment. Consequently, his motion for leave to proceed in forma pauperis will be denied.

I note that this will be the third lawsuit petitioner has filed that will be dismissed on the ground that it is legally meritless or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2). In orders dated August 23, 2006, I dismissed petitioner’s claims in Case Nos. 06-C-447-C and 06-C-448-C and issued him one strike for each lawsuit pursuant to 28 U.S.C. § 1915(g). Petitioner should be aware that because he is receiving his third “strike” for filing this lawsuit, he may not seek pauper status in any future civil action or appeal “unless [he] is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

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, Janel Nickel, Captain Sean Salter and Mike Vanderbrook violated his Eighth Amendment rights by permitting him to be kept in a filthy-smelling cell block.

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 24th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge