

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

DWAYNE ALMOND,

Petitioner,

v.

ORDER

06-C-450-C

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

Respondents.

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.

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 orders dated August 23, 2006, I granted petitioner leave to proceed in Case

Nos. 06-C-446-C and 06-C-551-C. However, I denied him leave to proceed in Case Nos. 06-C-447-C, 06-C-448-C and 06-C-449-C, because the claims he raised in those lawsuits were legally meritless. Consequently, I issued petitioner one strike for each of his meritless lawsuits, as I was required to do under 28 U.S.C. § 1915(g). Because petitioner has now accumulated three strikes under § 1915(g), he may not seek pauper status in this or any future civil action or appeal “unless [he] is under imminent danger of serious physical injury.” Therefore, my review of petitioner’s complaint is limited to determining whether he has alleged that he is in imminent danger of such injury. Because he has not done so, petitioner’s request to proceed in forma pauperis will be denied.

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.

(Respondent does not identify the respective jobs of respondents Janel Nickel, Captain Sean Salter or Mike Vanderbrook.)

B. Sharps Restriction

When petitioner attempted suicide using a razor blade (when this occurred, he does not say), respondent Nickel placed him on a “sharps restriction.” Inmates on “sharps restrictions” are not permitted to possess any sharp objects, including staples. A tag was placed on the outside of petitioner’s cell, notifying staff members that he had a sharps restriction.

Nevertheless, on March 28, 2006, correctional officer Neumaier gave petitioner paper that had been stapled together even though petitioner told Neumaier that he was on a sharps restriction. Petitioner turned the staples over to deputy warden Clements.

Petitioner filed an inmate complaint regarding Neumaier’s action. When the inmate complaint examiner investigating petitioner’s complaint spoke with Neumaier about the incident, Neumaier stated falsely that if he had given petitioner a staple, he had done so unintentionally.

OPINION

Petitioner alleges that on March 26, 2006, respondent Nickel gave petitioner a packet of paper that had been stapled together. Because petitioner was on a “sharps restriction” at the time, he was not permitted to possess any sharp objects, including staples. Petitioner does not allege that he was hurt by the staple respondent Nickel gave him and he has not alleged that respondent Nickel or any one else has continued to provide him with objects that might pose a danger to his health or safety.

As I discussed above, because petitioner has filed a flurry of legally frivolous lawsuits, he is barred from proceeding in forma pauperis unless he alleges that he is in imminent danger of serious physical harm. His allegations in this case do not suggest that he is in any danger, imminent or otherwise; consequently, his request for leave to proceed in forma pauperis will be denied. Nevertheless, petitioner must pay the \$350 fee for filing this action, whether or not he intends to pursue it. If petitioner does not pay the fee by September 13, 2006, the clerk of court is directed to close this case and notify the warden of the Wisconsin Resource Center of petitioner’s obligation to pay the fee. It will be up to the warden to determine how amounts deposited to petitioner’s account, if any, might be utilized to pay petitioner’s debt to this court, even though the installment provision of 28 U.S.C. § 1915(b)(2) does not apply to petitioner. Dallas v. Gamble, slip op. WL 2371346 (W.D. Wis. Aug. 14, 2006).

ORDER

IT IS ORDERED that petitioner Dwayne Almond's request to proceed in forma pauperis is DENIED.

Further, IT IS ORDERED that petitioner may have until September 13, 2006, in which to pay the \$350 fee for filing this action. If, by September 13, 2006, petitioner fails to pay the required filing fee, the clerk of court is directed to close this case and notify the warden of the Wisconsin Resource Center of petitioner's obligation to pay the filing fee.

Entered this 24th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge