

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

WILLIE HOGAN,

Petitioner,

v.

STATE OF WISCONSIN;
STEVE WATTERS, Director (Sand
Ridge Secure Treatment Center);
STEVE SCHNEIDER, Security Director (S.R.S.T.C.);
DAVID THORNTON, Treatment Director (S.R.S.T.C.);
ROSIE HALVERSON, Patient Care Technician;
WAYNE HAINES, PCS Patient Care Technician (S.R.S.T.C.),

Respondents.

ORDER

06-C-467-C

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Willie Hogan, who is presently confined at the Sand Ridge Secure Treatment Facility in Mauston, Wisconsin, contends that respondents restricted his liberty in violation of his right to due process.

In an order dated September 27, 2006, I concluded that petitioner was eligible to proceed in forma pauperis. However, under 28 U.S.C. § 1915(e)(2), if a litigant is requesting pauper status, the court must screen the complaint to determine whether the

action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief.

This action will be dismissed because petitioner has failed to state a claim upon which relief may be granted. Under current law, petitioner was not entitled to procedural protections at his hearing.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner Willie Hogan has been civilly committed as a "sexually violent person" under Chapter 980 of the Wisconsin Statutes. He is currently a patient at the Sand Ridge Secure Treatment Facility in Mauston, Wisconsin. In October 2002, respondent Rosie Halverson, a patient care technician, filed an incident report against petitioner, in which she alleged that he had engaged in inappropriate touching, sexual misbehavior and horseplay and had told another patient, "You kiss like a girl." At his "behavior disposition record" hearing, respondents did not provide petitioner with a staff advocate or allow petitioner to present witnesses or confront respondent Halverson. Petitioner was found guilty and placed in segregation. (Petitioner alleges also that he was placed on "unit AD on 72-hour back-to-back

three time reassignment status,” but it is not clear what this means.) Respondent Steve Watters, the director of the treatment center, affirmed the decision on an administrative appeal.

Petitioner later received a hearing for discharge or supervised release. At the hearing, “an unidentified individual representing Sand Ridge” stated that petitioner’s record included reports of inappropriate sexual behavior. He was denied release at that time.

DISCUSSION

I understand petitioner to contend that respondents violated his right to due process at the hearing for the incident report by refusing to provide him with a staff advocate and not allowing him to call witnesses or confront respondent Halverson, who wrote the incident report. Petitioner brought a similar claim in Hogan v. State of Wisconsin, 06-C-283-C, which I dismissed because petitioner failed to explain how any of the respondents were involved in the alleged violations. In addition, I dismissed the State of Wisconsin because it cannot be sued for money damages under §1983. June 13, 2006 Order, dkt. #1.

Petitioner’s new complaint suffers from many of the same defects as the first. Although petitioner now includes a discussion of what he believes are the obligations of several of the respondents, he does not explain how most of respondents are responsible for failing to provide him with due process. Oddly, petitioner does not identify who was

running the hearing or was present at it. Petitioner does allege that respondent Halverson wrote the incident report, but this sheds no light on whether Halverson was involved in any decision regarding the procedural protections that would be provided at the hearing. Because petitioner's complaint does not give notice to respondents of their alleged wrongdoing, it does not meet the requirements for pleading under Fed. R. Civ. P. 8.

The one exception relates to respondent Watters, who petitioner says "did not commit the due process violation," but is liable nevertheless because "of his failure to correct [the violation] on administrative appeal." Even assuming, however, that respondent Watters was personally involved (and is not entitled to immunity), petitioner's complaint suffers from a more fundamental problem. Regardless whether respondents did deny additional process to petitioner, there is still the question whether any additional process was due. Under the due process clause of the Fourteenth Amendment, government actors are not required to provide process unless they are depriving someone of liberty or property. Further, not all restrictions on liberty will trigger due process protections.

Unfortunately for petitioner, the Court of Appeals for the Seventh Circuit has held that Chapter 980 patients like him are governed by the same standard for determining due process as prisoners. Thielman v. Leean, 282 F.3d 478, 483 (7th Cir. 2002). Under that standard, patients are not entitled to due process protections unless their duration of confinement is increased or they are subjected to an "atypical and significant" hardship.

Sandin v. Conner, 515 U.S. 472, 484 (1995).

Petitioner may believe that he satisfies both of these requirements but the law is to the contrary. In Sandin, 515 U.S. at 484, the Court held that “discipline in segregated confinement d[oes] not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest.” Although Sandin involved prisoners rather than patients, in Thiel v. Wisconsin, 399 F. Supp. 2d 929, 933 (W.D. Wis. 2005), I relied on Thielman, 282 F.3d 478, and concluded that, like prisoners, patients did not retain a liberty interest in their level of classification. Further, although petitioner may believe that the incident report hurt his chances of release, due process protections are triggered only when the consequences imposed “inevitably affect the duration” of confinement. Sandin, 515 U.S. at 487. In situations like petitioner’s, in which misconduct was one of various factors that could influence a decision regarding release, “the balance is simply too attenuated to invoke the procedural guarantees of the Due Process Clause.” Id. Under this law, petitioner was not

entitled to greater process than he received.

ORDER

IT IS ORDERED that this action is DISMISSED for petitioner Willie Hogan's failure to state a claim upon which relief may be granted. The clerk of court is directed to close the file.

Entered this 2d day of October, 2006.

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