

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

DWAYNE ALMOND,

Petitioner,

v.

STATE OF WISCONSIN, GREEN
BAY WARDEN OF PRISON, MR.
LT. VANGREEN of Green Bay, MS.
JEANANNA GREENWOOD, Supervisor
HSU, MS. R.N. JEAN LUTSKY, MR. LT.
SWIEKATOWSKI, MR. MICHAEL J.
MOHR, ICE Dept.,

Respondents.

ORDER

06-C-556-C

This is a proposed civil action for monetary relief under 42 U.S.C. § 1983. Petitioner Dwayne Almond, an inmate at the Green Bay Correctional Institution in Green Bay, Wisconsin, contends that respondents violated his constitutional rights under the Eighth Amendment of the United States Constitution. I note that petitioner filed five other lawsuits on the same day he filed this action. Petitioner's complaints in Case Nos. 06-C-557-C, 06-C-558-C, 06-C-559-C, 06-C-560-C and 06-C-561-C will be addressed in separate orders.

In orders dated August 23, 2006, I denied petitioner 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). As I explained to petitioner in an order dated August 24, 2006, in Case No. 06-C-450-C, because he has 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

Petitioner Dwayne Almond is a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin.

Petitioner takes medication for paranoid schizophrenia and psychosis that makes him particularly susceptible to heat exhaustion. On May 28, 2006, the temperature in petitioner’s cell reached 105° Fahrenheit. Petitioner was given an insufficient amount of water, and consequently suffered a heat stroke. He was unable to call staff to assist him

because the emergency call button in his cell was not working. The following day, respondent Van Green passed by petitioner's cell. Although petitioner requested medical attention, respondent Van Green would not take petitioner to the hospital.

OPINION

Petitioner alleges that on May 28, 2006, he suffered a heat stroke which prison officials did not treat adequately. Petitioner seeks money damages only in this lawsuit, and does not contend that he continues to be subject to extreme heat with its attendant complications. Given the fact that it is now late autumn, it is unlikely that petitioner will face another bout of extreme heat in his prison cell any time in the immediate future.

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 such danger; 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 October 20, 2006, the clerk of court is directed to close this case and notify the warden of the Green Bay Correctional Institution 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 October 20, 2006, in which to pay the \$350 fee for filing this action. If, by October 20, 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 Green Bay Correctional Institution of petitioner's obligation to pay the filing fee.

Entered this 4th day of October, 2006.

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