

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

RICHARD SCHNEITER, GARY BOUGHTON,
PETER HUIBREGTSE, RICK RAEMISCH,
SANDRA HAUTAMAKI, ELLEN RAY, GERALD
BERGE, CAPTAIN MONICA HORNER, THOMAS
CRAVENS and SGT. STEVEN WRIGHT,

Defendants.

ORDER

06-C-608-C

In an order dated November 13, 2005, I granted plaintiff Nathaniel Lindell leave to proceed in this civil action on his claims that prison officials violated his rights under the First and Eighth Amendments of the United States Constitution. I denied him leave to proceed on certain other claims. Subsequently, on December 13, 2006, I denied plaintiff's motion for reconsideration of that decision. Now before the court is plaintiff's motion for "clarification" of these two orders. The motion for clarification will be granted; plaintiff's request to proceed on an additional due process claim will be denied.

In his motion, plaintiff complains:

In neither of the orders cited above has this court acknowledged or resolved one way or the other whether or not Lindell has (or ever could have) a due process claim concerning being (as he alleged) unjustifiably housed in a supermax prison—this is the central claim in this case and at least one other court has recognized this as a due process violation. See Koch v. Lewis, 216 F. Supp. 2d 994, 1003-07 (D. Ariz. 2001).

This is not the first time this court has discussed plaintiff's due process claim. I explained in the November 13 order, dkt. #2, at 22-26, that plaintiff pleaded himself out of court on this claim by acknowledging that prison officials provided him with adequate procedural safeguards in connection with their decision to retain him at the Wisconsin Secure Program Facility. That order focused on the adequacy of the procedures used at plaintiff's placement review hearing; however, plaintiff asserts in his pending motion that what concerns him most is not the procedure he was given at his hearing, but the reasons underlying defendants' decision to retain him at the facility.

If prison officials act arbitrarily when imposing atypical and significant hardships on prisoners, they may well violate the due process clause. For example, were prison officials to decide that a prisoner should be placed in a supermaximum correctional facility simply because he liked the paintings of Keith Haring better than those of John William Waterhouse, they would likely violate the due process clause—even if they proved conclusively that the prisoner did, in fact, have the aesthetic preferences attributed to him. The prisoner's artistic taste would bear no rational relationship to any non-arbitrary reason;

therefore, the deprivation would be unsupportable.

Plaintiff asserts that his situation is similar to the one described above. In his complaint, he alleges that prison officials “deemed him” a “member/affiliate” of a white separatist gang, the Aryan Circle, and that prison officials placed him in supermaximum security because they disapproved of his “taste” in political and social theories.

Plaintiff does not deny that he is a member of the Aryan Circle, though he does imply that prison officials cannot prove his gang affiliation. However, in previous lawsuits, plaintiff has admitted that he is a white separatist, going so far as to sue prison officials for allegedly violating his Eighth Amendment rights by housing him in the same cell as a black inmate with whom he had “racial/cultural conflicts.” Lindell v. Houser, 442 F.3d 1033, 1035 (7th Cir. 2006); see also Lindell v. McCallum, 352 F.3d 1107, 1108 (7th Cir. 2003) (“Lindell . . . has been described without contradiction as an ‘avowed White Supremacist.’”).

Regardless whether plaintiff is affiliated officially with the Aryan Circle, his outspoken beliefs regarding racial segregation are ones that implicate obvious security concerns. Unlike matters of artistic taste, plaintiff’s “philosophical” tastes are ones with which the prison is understandably concerned. E.g., Wilkinson v. Austin, 545 U.S. 209, 227 (2005) (acknowledging states’ interest in maintaining supermaximum security prisons to combat prison gangs “fueled by race-based hostility”). Despite plaintiff’s protestations to the contrary, prison officials had more than a minimally adequate reason for confining him in

the Wisconsin Secure Program Facility. Consequently, he has not stated a due process claim against defendants on the ground that their stated reason for confining him at the Wisconsin Secure Program Facility was really no reason at all.

ORDER

IT IS ORDERED that plaintiff Nathaniel Lindell's motion for clarification is GRANTED. His request for leave to proceed in forma pauperis on his due process claim remains DENIED.

Entered this 29th day of January, 2007.

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