

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

CORNELIUS R. MADDOX,

Plaintiff,

v.

ORDER

06-C-761-C

GERALD BERGE, JON E. LITSCHER,
PETER HUIBREGTSE, CAPT BLACKBOURN,
MS. T. HANSON, LT. GRONDIN,
LINDA HODDY-TRIPP, TIM HAINES
and MR. & MRS. MILES,

Defendants.

Plaintiff has filed two documents with the court. First, he has filed an addendum to his complaint in response to an opinion and order dated February 8, 2007, in which I screened plaintiff's complaint in accordance with 28 U.S.C. § 1915A. In that order, I concluded that some of plaintiff's allegations were too sparse to determine whether he had viable claims and I asked him to file an addendum describing these claims in more detail.

In addition to the addendum, plaintiff has filed a motion for a 30 to 60 day extension of time "to pursue my case" because the Green Bay Correctional Institution (where he is incarcerated) is on lockdown indefinitely and he is unable to use the law library. (Local press

reports confirm plaintiff's account. A newspaper quotes the prison's warden as stating that the lockdown "could go another month" as result of a threat by some prisoners to stop working unless certain conditions were improved. Paul Srubas, "Warden Cites 'Strong-Arming' for Prison's Long Lockdown," Green Bay Press Gazette, March 7, 2007.) However, it is not clear from the face of the motion what plaintiff wants more time to do. The addendum is the only deadline plaintiff currently faces and plaintiff has already filed this.

Plaintiff begins his motion by stating that he is responding to the order dated March 2, 2007. This court did not issue an order on or around March 2 in this case, but March 2 was the deadline for plaintiff to file his addendum. It may be that plaintiff is seeking more time to file *another* addendum because he believes the one he filed is not sufficiently researched. If this is what plaintiff is asking, it is unnecessary to consider that request unless plaintiff's addendum is somehow deficient. Accordingly, I will consider the adequacy of plaintiff's addendum first.

In the February 8 screening order, I stayed a decision whether to allow plaintiff to proceed on the following two claims: (1) members of the administrative confinement review committee (respondents Hanson, Grondin, Hoddy-Tripp, Haines and "Mr. and Mrs. Miles") retained plaintiff in administrative confinement, in violation of his right to due process; and (2) respondents Berge and Litscher refused to permit plaintiff to attend congregative religious services, in violation of his rights under the Religious Land Use and Institutionalized Persons

Act and the First Amendment free exercise clause. I asked plaintiff to file an addendum to his complaint including the following information:

a) a statement indicating whether he wishes to pursue a due process claim with respect to his retention in administrative confinement;

b) if plaintiff indicated he wished to proceed with his due process claim, a statement indicating why he believes the administrative confinement review committee did not conduct periodic reviews of his status in administrative confinement as contemplated by Wisconsin's administrative code provisions and explaining when the departure from the state required procedure occurred and what part of the procedure was not followed;

c) a statement identifying the religion to which he belonged in 2000 and 2001, as well as stating whether respondent Berge made religious services available to plaintiff by broadcast television and what effect his inability to attend group religious services had on his ability to practice his religion, if any.

I told plaintiff that if he failed to file an addendum, I would assume that he did not wish to proceed with these claims.

With respect to his free exercise claim, plaintiff states that he is a Christian, that he could not attend services and that he did not have access to "Bibles," "videos" or a "pastor." Although plaintiff has not provided the details I would have hoped, he has alleged enough to state a claim that his exercise of religion was substantially burdened, in violation of the

Religious Land Use and Institutionalized Persons Act. Accordingly, I will allow plaintiff to proceed on this claim against defendants Berge and Litscher.

Plaintiff does not allege any facts concerning defendants Berge's and Litscher's involvement in the alleged violation but I will assume at this stage that the alleged deprivation occurred as a matter of policy or practice and that Berge as the warden and Litscher as the secretary of the department were both responsible. However, at later stages of the proceedings, plaintiff will have to show that the alleged violations occurred at the direction of or with the knowledge and consent of Litscher and Berge. Nanda v. Moss, 412 F.3d 836 (7th Cir. 2005).

With respect to his due process claim concerning his retention in administrative confinement, plaintiff has not stated whether he wishes to proceed with the claim. In fact, he has not addressed that claim at all. Instead, he includes a section in his addendum titled "Procedural Due Process Violation Pursuant to Discipline Received by C.C.A. Whiteville Correctional Facility on December 23, 1999." Plaintiff goes on to discuss a claim that he was denied due process for the disciplinary charge he received for being involved in a riot. However, as I explained in the February 8 order, plaintiff may not proceed on that claim because the statute of limitations has expired.

The claim I stayed was a very different one: whether plaintiff was receiving meaningful reviews *after* he was placed in administrative confinement. It had virtually

nothing to do with the events that initially triggered his transfer into administrative confinement. I construe plaintiff's silence on this issue as a statement that he did not to intend to bring a due process claim regarding his retention in administrative confinement and I will dismiss that claim.

Given these conclusions, it would be pointless to give plaintiff yet another opportunity to clarify the allegations in his complaint. I am allowing plaintiff to proceed on his religion claims, making another addendum unnecessary. Although I am dismissing plaintiff's due process claim, it is not because plaintiff failed to cite the right cases or did not thoroughly research his addendum before filing it. I asked him to provide more *facts*, not more law. Because plaintiff did not need to research the law to tell the court whether he wanted to pursue his claim and whether he was receiving periodic reviews while in administrative confinement, he was not prejudiced by the denial of access to a law library. His failure to comply with the order indicates he does not wish to pursue the due process claim related to his retention in administrative confinement. Accordingly, I will deny his motion for additional time to prepare a second addendum to his complaint.

ORDER

IT IS ORDERED that

1. Plaintiff is GRANTED leave to proceed on his claim that defendants Gerald Berge

and Jon Litscher substantially burdened his ability to exercise his religion by denying him congregate religious services or an adequate alternative, in violation of the Religious Land Use and Institutionalized Persons Act and the First Amendment free exercise clause.

2. Plaintiff's claim that Ms. T. Hanson, Lt. Grondin, Linda Hoddy-Tripp, Tim Haines and Mr. and Mrs. Miles retained him in administrative confinement, in violation of the due process clause is DISMISSED WITHOUT PREJUDICE to plaintiff's refiling it at a later date. Because this was plaintiff's only claim against defendants, Hanson, Grondin, Hoddy-Tripp, Haines, Miles and Miles, they are DISMISSED from the case.

3. Plaintiff's motion for additional time to file a second addendum to his complaint is DENIED.

4. Copies of plaintiff's complaint, the addendum to his complaint and this court's orders in this case are being forwarded to the United States Marshals Service for service on defendants Berge and Litscher.

Entered this 12th day of March, 2007.

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