

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

CORNELIUS R. MADDOX,

Plaintiff,

v.

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

Defendants.

OPINION AND ORDER

06-C-0761-C

This is a civil action for monetary relief, brought pursuant to 42 U.S.C § 1983. Plaintiff Cornelius R. Maddox, a prisoner at the Green Bay Correctional Institution, maintains that defendants violated his constitutional and statutory rights during the time he was confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Following screening under 28 U.S.C § 1915A, I permitted plaintiff to proceed on claims that

a) defendants Gerald Berge and Jon E. Litscher violated plaintiff's Eighth Amendment rights by failing to allow him out-of-cell recreation;

b) defendants Berge and Litscher violated plaintiff's Eighth Amendment rights by subjecting him to 24-hour illumination in his cell;

c) defendant Captain Blackburn subjected plaintiff to unreasonable strip searches;

d) defendants Berge and Litscher violated plaintiff's First Amendment rights by depriving him of access to newspapers and magazines;

e) defendants Berge and Litscher refused to permit plaintiff to attend congregate religious services in violation of his rights under the Religious Land Use and Institutionalized Persons Act and the First Amendment's free exercise clause; and

f) defendants Hanson, Grondin, Hoddy-Tripp, Haines, Mr. and Mrs. Miles, Huibregtse, Berge and Litscher retained him in administrative confinement in violation of the due process clause.

Now before the court are defendants' motion for summary judgment and defendants' motion to strike the Affidavit of Cornelius R. Maddox, the Affidavit of Dennis E. Jones-El, and Exhibits #1 and #2 on the ground that plaintiff failed to serve a copy of each of these documents on defendants. Because considering the affidavits makes no difference in the outcome of defendants' motion for summary judgment, I will deny the motion to strike as unnecessary. I conclude that defendants are entitled to summary judgment with respect to each claim because plaintiff has not exhausted the administrative remedies available to him as required by the Prisoner Litigation Reform Act. 42 U.S.C. § 1997e(a). Therefore

defendants' motion for summary judgment will be granted.

From the parties' proposed findings of fact, I find the following facts to be material and undisputed.

FACTS

Plaintiff Cornelius R. Maddox is an inmate at the Green Bay Correctional Institution. From January 13, 2000 to July 19, 2001, plaintiff was confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Plaintiff was transferred thereafter to Dodge Correctional Institution, where he remained until his transfer to the Green Bay Correctional Institution, on August 3, 2001.

During his time at the Wisconsin Secure Program Facility (known formerly as the Supermax Correctional Institution) and the Dodge Correctional Institution, plaintiff filed five inmate complaints concerning his confinement at the Wisconsin Secure Program Facility. One of these inmate complaints, DCI-2001-22576, challenged the grounds for plaintiff's placement at the Wisconsin Secure Program Facility and is the complaint relevant to this case. Complaint DCI-2001-22576 stated in its entirety:

This complaint address[es] Supermax Correctional Institution (S.M.C.I) and the Wisconsin Department of Correction (W.D.O.C) deliberate and wrongful segregation of my person based exclusively on the fabricated accusations of major misconduct set forth by Corrections Corporation of America / Whiteville Correctional Facility CCA / WCF stemming from an incident occurring on November 30, 1999 while housed at CCA / WCF pursuant to

Wis. Stats. 301.21(2m) both S.M.C.I and the W.D.O.C failed to investigate CCA / WCF accusations of major disciplinary misconduct. See Wis. Stats. s. 302.26 and s. 302.25[.] [A]s a result this complainant was wrongfully segregated in complete and total isolation the most severe form of segregation punishment in the state of Wisconsin for a period exceeding 20 months. Only now does both S.M.C.I and the W.D.O.C. acknowledge that in fact no evidence ever existed to substantiate the charges as alleged by CCA / WCF expunging the record of such charges and releasing this complainant from segregation. However this does not lessen the obvious physical deprivations suffered as a result of this prolonged wrongful isolations, nor does it attempt in anyway to comfort the subsequent mental and emotional scar[.]s left behind. Therefore, this complainant seek monetary compensations for these great losses and severe pain caused by S.M.C.I and the W.D.O.C deliberate failure to adhere to due process of the law by determining whether there existed any evidence to justify the inflection of such punishment upon this complainant. This complaint also seeks compensation for any and all wages this complainant would have earned while in the general prison population[.] See Wis. Admin. Code s. DOC 303.11(6).

OPINION

The 1996 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” The Court of Appeals for the Seventh Circuit has held that “[e]xhaustion of administrative remedies, as required by § 1997e, is a condition precedent to suit” and that district courts lack discretion to decide claims on their merits unless the exhaustion requirement has been satisfied. Dixon v. Page, 291 F.3d 485, 488 (7th Cir. 2002); see also Woodford v. Ngo, 126 S. Ct. 2378, 2382

(2006). Failure to exhaust is an affirmative defense that the defendants have the burden of pleading and proving. Jones v. Bock, 127 S. Ct. 910, 919 (2007); Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002).

In considering what facts or pleadings an inmate's administrative complaint should contain in order to satisfy the exhaustion requirement, the court must look to the appropriate administrative system requirements, which in this case is Wis. Admin. Code Chapter DOC 310. Strong v. David, 297 F.3d 646, 649 (7th Cir. 2002). Plaintiff need not articulate specific legal theories or particular remedies but need only make known an objection to some problem or wrongdoing. Id. Nevertheless, the complaint must be clear enough to allow the inmate complaint examiner to understand the nature of the claim.

In addition to placing prison officials on notice, a complaint must comply with the procedural requirements of the system in which the grievance is filed, Woodford, 126 S. Ct. at 2378; Pozo v. McCaughtry, 286 F.3d 1022, 1023 (7th Cir. 2002) ("unless the prisoner completes the administrative process by following the rules the state has established for that process, exhaustion has not occurred"), even if the prisoner cannot achieve an effective response through the system. Massey v. Helman, 196 F.3d 727, 733 (7th Cir. 1999).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners start the complaint process by filing an inmate complaint with the institution

complaint examiner. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements or recommend to the appropriate reviewing authority that they be granted or dismissed. Wis. Admin. Code § DOC 310.07(2). However, if the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority has the authority to dismiss, affirm or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct additional investigation where appropriate and make a recommendation to the secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § DOC 310.13. Within ten working days following receipt of the corrections complaint examiner's recommendation, the secretary must accept the recommendation in whole or with modifications, reject it and make a new decision or return it for further investigation. Wis. Admin. Code § DOC 310.14.

Plaintiff contends that he exhausted available administrative remedies with respect to each of the claims at issue in this case by filing and exhausting inmate complaint DCI-2001-22576. Defendants do not dispute that plaintiff exhausted the complaint process for DCI-2001-22576; but, they do dispute whether that complaint gave prison officials sufficient notice that plaintiff was challenging his lack of out-of-cell recreation, 24-hour cell

illumination, strip searches, access to newspapers and magazines, inability to attend congregate religious services and the denial of meaningful periodic administrative reviews of his confinement.

A. Prison Conditions Claims

In inmate complaint DCI-2001-22576 plaintiff described life at the prison as, “complete and total isolation” and “the most severe segregation punishment in the state of Wisconsin.” He also explained that he experienced “great losses and severe pain” and “physical deprivations” while confined at the Wisconsin Secure Program Facility. Plaintiff argues that the terminology he used to describe the conditions in DCI-2001-22576 should have put the prison on notice that he was challenging the “totality of the conditions” of his confinement at the Wisconsin Secure Program Facility including lack of out-of-cell recreation, 24-hour cell illumination, strip searches, access to newspapers and magazines and inability to attend congregate religious services. With that understanding, plaintiff contends he has exhausted his available administrative remedies by way of the generalized complaints expressed in his grievance.

As defendants point out, plaintiff’s descriptions of the Wisconsin Secure Program Facility are not what he appeared to be challenging in DCI-2001-22576. In his inmate complaint, plaintiff described the deprivations at Wisconsin Secure Program Facility in the

context of arguing why it was wrong that he was placed at the facility in the first place. It appears from plaintiff's complaint that in November 1999 he was confined at the Whiteville Correctional Facility in Whiteville, Tennessee. Later plaintiff was issued a disciplinary report charging him with participation in an insurrection that occurred around November 30, 1999. As a result of this disciplinary report, plaintiff was transferred to the Wisconsin Secure Program Facility. In his inmate complaint DCI-2001-22576, plaintiff wrote that because "both S.M.C.I and the W.D.O.C failed to investigate CCA / WCF accusations of major disciplinary misconduct . . . this complainant was wrongfully segregated in complete and total isolation the most severe form of segregation punishment in the state of Wisconsin for a period exceeding 20 months." This statement could not reasonably be construed as challenging the general conditions of the prison and certainly not the individual constitutional violations that plaintiff has alleged in this case.

The United States Supreme Court has emphasized that one of the purposes of the exhaustion of administrative remedies requirement is to give an agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." Woodford, 126 S. Ct. at 2385. In this case the prison did not have that opportunity because plaintiff did not file a complaint alleging then what he alleges today. Because plaintiff's complaint DCI-2001-22576 was not clear enough to allow the inmate complaint examiner to understand the nature of plaintiff's claim, I must grant defendants'

motion for summary judgment on all of plaintiff's claims challenging the conditions of his confinement.

B. Procedural Due Process

In the order dated April 10, 2007, I made it clear that the applicable statute of limitations barred plaintiff from bringing a claim based upon the circumstances surrounding his initial transfer to Wisconsin Secure Program Facility in 2000. Presumably, with this in mind, plaintiff amended his complaint to challenge not his initial transfer to Wisconsin Secure Program Facility, but rather his continued retention in administrative confinement without the meaningful periodic reviews required by Wis. Admin. Code § DOC 308.04.

In DCI-2001-22576, plaintiff alleged that prison officials deliberately failed to “adhere to due process of the law by determining whether there existed any evidence to justify” his wrongful segregation in “complete and total isolation[;] the most severe form of segregation punishment in the state of Wisconsin” That statement did not put prison officials on notice that plaintiff was concerned with faults in the periodic review system, as he now alleges. “Due process” is a sweeping term that can be used in various ways in various contexts. If plaintiff intended to challenge the adequacy of the periodic review system at Wisconsin Secure Program Facility, he needed to be more explicit in saying so.

In addressing any pro se litigant's complaint, the court is required to read the

allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, in this case, even a generous reading of plaintiff's inmate complaint does not suggest that he was challenging the periodic review system specifically. A more plausible reading would suggest that plaintiff wished to challenge the process by which he was transferred to the Wisconsin Secure Program Facility in the first place; a claim which is barred by the statute of limitations. Because plaintiff has failed to exhaust his available administrative remedies on the claim he attempts to bring today, I will grant summary judgment for defendants on each of plaintiff's claims.

ORDER

IT IS ORDERED that

1. Defendants' motion to strike the Affidavit of Cornelius R. Maddox, the Affidavit of Dennis E. Jones-El and Exhibits #1 and #2 is DENIED as unnecessary.
2. Defendants' motion for summary judgment is GRANTED because plaintiff

Cornelius Maddox did not properly exhaust available administrative remedies with respect to his claims.

Entered this 16th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge