

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

ANDREW J. BIGBEE,

Petitioner,

ORDER

v.

07-C-71-C

MICHAEL K. NALLEY, Regional Director,
Federal Bureau of Prisons, North Central
Region, Kansas City, Kansas;
RICARDO MARTINEZ, Warden,
Federal Correctional Institution,
Oxford, Wisconsin;
MR. SPROUL, Unit Manager,
Federal Correctional Institution,
Oxford, Wisconsin;
MR. DAVE BENSON, Recreation Specialist,
Federal Correctional Institution,
Oxford, Wisconsin;
R.B. CLOUTIER, Supervisor of Recreation,
Federal Correctional Institution,
Oxford, Wisconsin; and
JOHN J. SHOOK, Assistant Warden, I & E,
Federal Correctional Institution,
Oxford, Wisconsin,

Respondents.

This is a proposed civil action for monetary, injunctive and declaratory relief, brought under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), 28 U.S.C. §§ 1985 and 1986, 5 U.S.C. § 702, 18 U.S.C. 4042 and 28 U.S.C. §

1331. Petitioner, who was incarcerated at the Federal Correctional Institution in Oxford, Wisconsin at the time he filed his proposed complaint, requested leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915.

On April 3, 2007, I screened petitioner's complaint and dismissed several of his claims. I did not dismiss petitioner's claim that several respondents had engaged in retaliation against him. However, because petitioner's complaint did not include information required to put respondents on notice of the factual basis for the claim, I stayed a decision whether to allow petitioner to proceed on this claim and asked that he submit an addendum including specific additional information regarding the alleged retaliation. The requested information was: (1) what specific grievances petitioner filed for which he was retaliated against; (2) which respondents engaged in retaliation; and (3) what specific acts he contends were retaliatory in nature. I gave petitioner until April 26th, 2007 to submit this information. Petitioner did not respond in time. Instead, he filed a motion for an extension of time on May 2, 2007. While that motion was pending, petitioner filed his addendum on May 7, 2007. I will grant petitioner's motion for an extension of time and will consider the facts included in his addendum.

I requested more information from petitioner because, as the Court of Appeals for the Seventh Circuit has stated, a petitioner must plead three elements in order to state a claim for retaliation: he must "specify a retaliatory action"; he must name the appropriate

respondents; and he must “assert[] a constitutionally protected activity, the exercise of which caused the . . . retaliatory action.” Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005). This specificity is required to put respondents on notice sufficient to enable them to file an answer.

Unfortunately, petitioner’s addendum is no more clear regarding the requested information than was his initial complaint. He describes a string of events beginning in 2002 and continuing until 2006 that he asserts were motivated by retaliatory intent. However, the new allegations do not provide the information requested in a meaningful way because they fail to identify clearly either the constitutionally protected activity in which petitioner engaged or the retaliatory acts in which respondents allegedly engaged. The fifth paragraph on the third page of petitioner’s addendum provides an example:

I was back in the Hobbycraft Program in March of 2006, and in late May several inmates came to me saying that Defendant Benson was accusing me of stealing over 30 softball gloves and dying them black. It’s not good to be labeled as a thief so I told him I didn’t steal them and in fact, had no dyes at all in my supplies and he should look in his own backyard. He wouldn’t let it go and I never said another word and (2) weeks later on June 18, 2006, I got locked up in the SHU under investigation for alleging misconduct by staff members. (See Exhibit 1, Original Complaint).

This sort of allegation is problematic because it fails to provide key information necessary to place respondents on notice of petitioner’s claims. In order to receive First Amendment protection, an inmate’s speech must relate to a matter of public concern. McElroy v. Lopac,

403 F.3d 855, 858 (7th Cir. 2005); Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999) (imputing to inmate free speech claims requirement of public employee line of cases that protected speech must be about a “public concern”). Petitioner’s expression of displeasure at Benson’s accusations that he is a thief is a matter of solely personal concern. Thus, this speech is irrelevant to any potential retaliation claim petitioner might have. And, while allegations about staff misconduct might constitute protected speech, petitioner does not allege who locked him up in the SHU or how that person might have had knowledge of his protected speech. Petitioner cannot proceed on a retaliation claim against a target he has not identified or connected in any way with the protected speech and the retaliatory act.

In sum, petitioner’s addendum and attached materials fail to meet the standards of Fed. R. Civ. P. 8, which requires that a complaint set forth a “short and plain statement of the claim showing that the pleader is entitled to relief” and that “each averment of a pleading shall be simple, concise and direct.” “The primary purpose of Rule 8 is rooted in fair notice: a complaint ‘must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.’” Vicom, Inc. v. Harbridge Merchant Services, Inc., 20 F.3d 771, 775 (7th Cir. 1994). As a result, I find that petitioner has not met the requirements of Rule 8 and will deny him leave to proceed in forma pauperis on his retaliation claims without prejudice.

ORDER

IT IS ORDERED that

1. Petitioner Andrew Bigbee's request for an extension of time in which to file an addendum to his complaint is GRANTED. The addendum submitted by petitioner on May 7, 2007 is accepted for consideration.

2. Petitioner's request for leave to proceed in forma pauperis is DENIED and his retaliation claim is DISMISSED without prejudice.

3. The unpaid balance of petitioner's filing fee is \$211.11. This amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

4. 28 U.S.C. § 1915(g) directs the court to enter a strike when an "action" is dismissed "on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." Because I am not dismissing petitioner's claim for one of the reasons enumerated in 1915(g), a strike will not be recorded against him under § 1915(g).

5. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 21st day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge