

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

JEVON JACKSON,

Plaintiff,

v.

MEMORANDUM and ORDER
07-C-028-S

MATTHEW J. FRANK and
WILLIAM POLLARD,

Defendants.

Plaintiff Jevon Jackson was allowed to proceed on his First Amendment claims against defendants Matthew J. Frank and William Pollard. In his complaint he alleges that he was denied a commercial photograph, incoming postcards and access to his legal materials by the defendants.

On May 9, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision. Plaintiff cross moved for summary judgment on April 14, 2007.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

At all times material to this case plaintiff Jevon Jackson was incarcerated at the Green Bay Correctional Institution, Green Bay, Wisconsin. (GBCI). Defendant Matthew J. Frank is the Secretary of

the Wisconsin Department of Corrections. Defendant William Pollard is the warden at GBCI.

On February 19, 2006 plaintiff was placed in Temporary Lock Up status in the Receiving Unit without his legal materials. At this time he had a case pending in the United States District Court for the Eastern District of Wisconsin, Case No. 05-C-711. On February 21, 2006 plaintiff filed a motion in that case for an extension of time to file his motion for summary judgment. The Court granted him an extension of time to file his motion until March 27, 2006.

On March 13, 2006 plaintiff received most of his legal materials. Plaintiff realized the next day that he was missing two brown 9 by 12 envelopes containing about 250 pages of copied case law. Plaintiff was in the GBCI library for approximately 45 minutes on March 16, March 20, March 21, March 22, March 23, March 24 and March 27, 2006.

On March 15, 2006 plaintiff requested a second motion for an extension of time to file his motion for summary judgment. Before receiving the Court's order granting his motion for an extension until April 10, 2006, plaintiff filed his motion for summary judgment and supporting materials.

On June 23, 2006 in Case 05-C-711 the Court denied plaintiff's motion for summary judgment and granted defendant's motion for summary judgment. Plaintiff appealed and the United States Court of Appeals for the Seventh Circuit affirmed the

District Court's decision on one claim but vacated and remanded one claim. Case No. 05-C-711 is pending in the United States District Court for the Eastern District of Wisconsin.

Wisconsin Administrative Code §DOC 309.04(4)(c)(6) provides that the DOC may not deliver incoming or outgoing mail that is in code. Coded messages can be used to further drug trafficking, convey escape plans, relay gang messages, plan disturbances, order attacks on staff and other inmates and engage in other criminal conspiracies.

On August 10, 2006 plaintiff was denied postcards sent to him that contained algebraic notation for chess moves. Plaintiff was not prohibited from playing chess in the mail but was prohibited from using the code pursuant to §DOC 309.04(4)(c)(6).

On August 18, 2006 plaintiff filed an inmate complaint concerning the denial of a postcard on August 10, 2006 which was dismissed by the Inmate Complaint Examiner on August 23, 2006. As reviewer defendant Pollard affirmed the dismissal of plaintiff's complaint. John Ray, the Corrections Complaint Examiner, affirmed the dismissal of plaintiff's complaint on September 7, 2006. The Secretary accepted the decision of John Ray as to the complaint.

On August 21, 2006 plaintiff filed a second inmate complaint concerning the denial of a postcard on August 10, 2006 which was dismissed by the Inmate Complaint Examiner on August 23, 2006. As reviewer defendant Pollard affirmed the dismissal of plaintiff's

complaint. John Ray, the Corrections Complaint Examiner, affirmed the dismissal of plaintiff's complaint on September 6, 2006. The Secretary accepted the decision of John Ray as to the complaint.

As of September 5, 2006 the Division of Adult Institutions (DAI) of the DOC adopted a new inmate personal property policy, DAI Policy #309.20.01. Under this policy individual commercially published photos are not allowed in the institution.

The reasons that the DOC adopted this policy were that it could not continue to manage the increased volume of commercial photographs sent to the institution. These photographs had to be reviewed by mailroom staff for nudity and otherwise disallowed content. Where the photos were not permitted because of content, more staff time would be required to process the offending photographs. Personal photographs require less staff time because they are less likely to display disallowed content. Magazines are also easier to process than individual commercial photographs because mailroom staff can more readily predict whether a magazine will contain disallowed content because of its subject matter.

On October 18, 2006 plaintiff was denied a commercial photograph of Jennifer Aniston pursuant to this policy. On October 23, 2006 plaintiff filed an inmate complaint concerning the denial of this photograph. On November 9, 2006 the inmate complaint examiner dismissed plaintiff's complaint. The reviewer, Michael R. Baenen, affirmed the dismissal. On November 16, 2006 John Ray, the

Corrections Complaint Examiner, affirmed the decision to dismiss the complaint. On November 16, 2006 the Secretary accepted the decision of John Ray.

MEMORANDUM

Plaintiff claims that his First Amendment rights were violated when he was denied a commercial photograph of Jennifer Aniston, postcards with chess moves in algebraic code and his legal materials.

Plaintiff was denied the commercial photograph pursuant to DAI Policy 309.20.01. A prison regulation does not infringe on an inmate's constitutional rights if it is reasonably related to a legitimate penological goal. Turner v. Safely, 482 U.S. 78 (1987).

In Turner the Court identified the following four factors as helpful in determining whether a prison regulation is reasonably related to a legitimate penological goal: 1) a "valid, rational connection" between the regulation and a legitimate government interest; 2) the existence of alternative methods for the inmate to exercise his constitutional right; 3) the effect the inmate's assertion of that right will have on the operation of the prison and 4) the absence of an alternative method to satisfy the governments's legitimate interest. Turner, 482 at 89-91; Thornburgh v. Abbott, 490 U.S. 401 (1989); Lindell v. Frank, 377 F. 3d 655, 660 (7th Cir. 2004).

This regulation has a valid, rational connection to the legitimate interest of allocating staff time. The increased volume of commercial photographs had to be reviewed by mailroom staff for nudity and otherwise disallowed content. Where the photos were not permitted because of content, more staff time would be required to process the offending photographs. This would cause a significant increase in the expenditure of staff time and other resources which is a legitimate economic concern.

The accommodation of plaintiff's desire to have individual commercial photographs would have a significant adverse impact on allocation of staff resources. Plaintiff has an alternative means of obtaining commercial photographs by receiving magazines that contain photographs of celebrities and may have personal photographs. There has been no showing that there is an alternative method available to satisfy the legitimate interest of the institution in allocating staff resources in checking the increased volume of commercial photographs for content that is not allowed in the institution.

Pursuant to the four factors provided in Turner the prison regulation that commercial photographs are not allowed is reasonably related to legitimate penological interests. Plaintiff's First Amendment rights were not violated when he was denied the commercial photograph of Jennifer Aniston. Accordingly,

as a matter of law defendant is entitled to judgment on this First Amendment claim.

Plaintiff was denied postcards with algebraic chess moves on them pursuant to Wis. Admin. Code §DOC 309.04(4)(c)(6) which prohibits incoming and outgoing mail in code. Plaintiff argues that this algebraic code is the accepted way to play chess by mail.

The regulation has a valid, rational connection to the legitimate interest of institution security. Communications in code are difficult to decipher and could be used to further drug trafficking, convey escape plans, relay gang messages, plan disturbances, order attacks on staff and other inmates and engage in other criminal conspiracies. Allowing plaintiff to communicate in code would have an adverse effect on security as well as on the allocation of resources in the prisons.

Plaintiff has an easy alternative to communicating in code. He can play chess by mail by writing out his moves in words rather than in code. There has been no showing that there is another alternative to this regulation which would guard against the dangers of inmates communicating in code.

Pursuant to the four factors provided in Turner the prison regulation that commercial photographs are not allowed is reasonably related to legitimate penological interests. Plaintiff's First Amendment rights were not violated when he was denied postcards with chess moves in algebraic code. Accordingly,

as a matter of law defendant is entitled to judgment on this First Amendment claim.

Plaintiff claims that he was denied access to his legal materials for a pending suit while he was in Temporary Lock Up (TLU) status from February 19, 2006 to March 13, 2006. An inmate has a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817, 821-22 (1977). To prevail on a claim that he was denied access to the courts plaintiff must show he was prejudiced in pending or contemplated litigation. Lewis v. Casey, 518 U.S. 343, 349 (1996).

Plaintiff had a case pending in the United States District Court for the Eastern District of Wisconsin. While he was in TLU he was able to get extensions in that case in order to file his motion for summary judgment motion after he was released from TLU status, received most of his legal materials and was able to use the GBCI library for approximately 45 minutes on March 16, March 20, March 21, March 22, March 23, March 24 and March 27, 2006.

Although the Court denied his motion for summary judgment, the United States Court of Appeals for the Seventh Circuit reversed the district court's decision on one of plaintiff's claims and the case is still pending in the district court.

Plaintiff has not shown that the denial of his legal materials while he was in TLU prejudiced him in his pending case. Accordingly, he was not denied access to the Courts and defendants

are entitled to judgment in their favor on this claim. Defendants' motion for summary judgment will be granted and plaintiff's motion for summary judgment will be denied.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 25th day of May, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge