IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WAR N. MARION,

Petitioner, OPINION AND ORDER

v. 07-C-243-C

COLUMBIA CORRECTIONAL INSTITUTION,
WARDEN GREGORY GRAMS,
DEPUTY WARDEN MARC CLEMENTS,
CAPTAIN LESLY WINSLOW-STANLEY,
C.O. GREGORY GARRISON,
CAPTAIN DYLON RADTKE,
SUPERVISOR JANEL NICHOLS,
ADVOCATE MARY PEISER,
PSYCHOLOGIST ANDREA NELSON, and
LT. KELLER,

Respondents.

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Petitioner War Marion, a prisoner, contends that respondents violated his rights to due process and equal protection in the context of a disciplinary proceeding. In a previous order, I concluded that petitioner was unable to prepay the full filing fee and I directed him to make an initial partial payment of $2.85, which the court has received.

Because petitioner is a prisoner, I am required under the 1996 Prison Litigation

Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. Because petitioner has failed to state a claim under either the due process clause or the equal protection clause, I must dismiss the case.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his amended complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner War Marion is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. On December 7, 2006, respondent Andrea Nelson, a psychologist at the prison, was passing out puzzles to the prisoners in their cells. When petitioner received three puzzles and his cell mate, C.S., received only one, C.S. began to "charge" petitioner. Petitioner clenched his fists to defend himself.

Respondent Nelson returned to the cell and saw petitioner with clenched fists. Correctional officers came to the cell to separate petitioner from C.S.; they placed petitioner in segregation and left C.S. in the cell.

Respondent Lesly Winslow-Stanley, a captain, investigated the incident. Petitioner

told her everything that happened. Winslow-Stanley did not return petitioner to his housing area, despite assurances that she would.

Respondent Gregory Garrison, a "staff writer," issued petitioner a conduct report. In the report Garrison, wrote that he saw petitioner with clenched fists, which was a lie; Garrison was not on the scene at the time.

In anticipation of his disciplinary hearing, petitioner requested the presence of four witnesses, respondents Nelson and Winslow-Stanley, as well as two other prisoners. Respondents Janel Nichols (the security director) and Dylon Radtke (a captain) did not allow petitioner to call the staff witnesses, on the ground that they were "unavailable" under Wis. Admin.Code § DOC 303.81(4).

Petitioner's advocate, respondent Mary Peiser, failed to prepare a defense for him. She "had involvement with the deliberate intentions in finding [petitioner] guilty."

On the date of the hearing, "staff failed to come get" petitioner. Later, respondent Keller, the hearing officer, wrote falsely that petitioner had refused to attend.

Petitioner was found guilty (of what he does not say) and given a punishment of 240 days in segregation. (Actually, petitioner alleges he "was given a 240 segregation time," which I assume means 240 days.)

C.S. never received a conduct report.

OPINION

When a person believes that he has been treated unfairly, it is natural to feel hurt and frustrated by that treatment and to seek vindication for the perceived wrong. A common way of attempting to obtain such vindication is through a lawsuit against the parties believed to be responsible. Unfortunately, however, there are many types of unfairness for which a federal lawsuit can provide no remedy.

This is one such case. Petitioner alleges that respondents denied him due process in various ways related to the discipline he received as a result of an incident with another prisoner. But what many prisoners do not know and may be surprised to learn is that the Constitution grants prisoner procedural protections in very limited circumstances only.

In Sandin v. Conner, 515 U.S. 472, 484 (1995), the Supreme Court held that prisoners are not entitled to *any* process under the Constitution unless the discipline they receive increases their duration of confinement or subjects them to an "atypical and significant" hardship. If the discipline does not fall into one of these categories, a prisoner has no recourse under the due process clause, even if he did not receive a hearing or even if the charge against him was a lie.

The punishment that petitioner received does not meet the demanding Sandin standard. Petitioner does not allege that defendants extended his sentence; rather he was placed in segregation. Such discipline may seem both “atypical and significant” to

petitioner, but the Supreme Court has held the opposite. The Court concluded in Sandin that placement in disciplinary segregation does not trigger due process protections. Id. at 485-86. See also Hoskins v. Lenear, 395 F.3d 372, 374- 75 (7th Cir. 2005) (prisoner not entitled to process for discipline of two months' segregation, loss of prison job, loss of privileges and transfer); Wagner v. Hanks, 128 F.3d 1173, 1175 (7th Cir. 1997) (after Sandin, "it becomes apparent that the right to litigate disciplinary confinements has become vanishingly small"). Accordingly, petitioner's due process claim must be dismissed for his failure to state a claim upon which relief may be granted.

I note that petitioner cites a number of state administrative regulations that he believes respondents violated as well. Unfortunately, those regulations cannot be enforced in federal court. If petitioner wishes to bring a suit under those regulations, he must do so in state court by filing a writ of certiorari.

Although petitioner is not completely clear in his complaint, it appears that he means to raise an equal protection claim as well, because the other prisoner involved was not disciplined. Again, although it may seem unfair to petitioner, prison officials are not required to administer the same discipline to all prisoners involved in an incident. In this case, respondents needed only to have a legitimate, rational reason for treating petitioner differently from the other prisoner. Vision Church v. Village of Long Grove, 468 F.3d 975, 1002 (7th Cir. 2006). Petitioner's own allegations reveal a legitimate basis for the

differential treatment: petitioner was caught in an aggressive stance, the other prisoner was not. Thus, it appeared that petitioner was the one picking the fight. Although petitioner insists that respondents misinterpreted his actions by taking them out of context, government officials violate equal protection only when they *intentionally* discriminate for an illegitimate purpose; mistakes do not violate the Constitution. Smith v. City of Chicago, 457 F.3d 643, 650 (7th Cir. 2006).

ORDER

IT IS ORDERED that

1. This case is DISMISSED for petitioner War Marion's failure to state a claim upon which relief may be granted.

2. The unpaid balance of petitioner's filing fee is $347.15; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b). (Although petitioner's case is being dismissed, he is still required to pay the filing fee in installments.)

3. A strike will be recorded, as required by 28 U.S.C. § 1915(g).

Entered this 8th day of June, 2007.

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