

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

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AUDIE MURPHY,

Plaintiff,

v.

C/O SAINSBURY,

Defendant.  
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OPINION and ORDER

07-C-283-C

This is a proposed civil action for monetary and injunctive relief brought under 28 U.S.C. § 1983. Petitioner Audie Murphy, who is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, alleges that respondent C/O Sainsbury violated his rights under the equal protection clause of the Fourteenth Amendment when he made an “inappropriate comment” over the loudspeaker at the Columbia Correctional Institution. Petitioner requests leave to proceed in forma pauperis under 28 U.S.C. § 1915 and has made the initial partial payment required under that statute.

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). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave

to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails 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(e)(2).

From petitioner's complaint and the attached materials, I draw the following factual allegations.

#### ALLEGATIONS OF FACT

Petitioner Audie Murphy is incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. Respondent Sainsbury is a correctional officer at the Columbia Correctional Institution.

On April 18, 2006, at approximately twelve o'clock in the afternoon, respondent made an announcement over the Columbia Correctional Institution loud speaker system that "all volunteers for the lawn mower crew please report to the bubble . . . whites only." Petitioner was offended by this statement and it angered him. Petitioner got out of bed to "question the authority" about the statement and to learn the identity of the officer who made the statement. Petitioner filed a grievance the following day. Since hearing the announcement, petitioner has been seeing the psychologist for distress.

## DISCUSSION

Petitioner contends that respondent violated his constitutional right to equal protection when he announced over the prison loudspeaker system “all volunteers for the lawn mower crew please report to the bubble . . . whites only.” Racism in any form is reprehensible and should not be condoned in any part of society. Although prisoners are expected to endure many “harsh” and “restrictive” conditions as “part of the penalty . . . for their offenses,” Rhodes v. Chapman, 452 U.S. 337, 347 (1981), bigotry and intolerance should not be among them. Santiago v. Miles, 774 F. Supp. 775, 777 (W.D.N.Y. 1991) (“Racism is never justified; it is no less inexcusable and indefensible merely because it occurs inside the prison gates.”)

Nevertheless, not all racial insensitivity violates the Constitution. The Court of Appeals for the Seventh Circuit has stated flatly that “the use of racially derogatory language, while unprofessional and deplorable, does not violate the Constitution. Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a person of a protected liberty interest or deny a prisoner equal protection of the laws.” DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2002). Petitioner does not suggest in his complaint in this case, or in the inmate complaint filed with the institution, that respondent’s offensive behavior extended beyond this individual grossly inappropriate statement. He does not allege that he was deprived of an opportunity to earn money or

other non-monetary credits for lawn mowing. Instead, petitioner is concerned strictly with the emotional harm caused by hearing respondent's statement on April 18, 2006. Accordingly, petitioner's claim will be dismissed for failure to state a claim upon which relief may be granted.

#### ORDER

IT IS ORDERED that:

1. Petitioner Audie Murphy's request for leave to proceed in forma pauperis on his due process and equal protection claims is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;
2. The unpaid balance of petitioner's filing fee is \$323.98; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);
3. A strike will be recorded against petitioner pursuant to § 1915(g); and
4. The clerk of court is directed to close the file.

Entered this 6th day of June, 2007.

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