

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

LAVAR A. BULLOCK,

Petitioner,

v.

MATTHEW FRANKS, Sec. of D.O.C.;
GREG GRAMS, Warden; CAPT. RADKE,
Security; JAMES SPANGENBERG, Unit
Manager; and JOHN DOE, Correctional
Officer;

Respondents.

OPINION and
ORDER

07-C-381-C

This is a proposed civil action for monetary, declaratory and injunctive relief brought under 42 U.S.C. § 1983. Petitioner LaVar Bullock, a former prisoner at the Columbia Correctional Institution in Portage, Wisconsin, alleges that respondent John Doe violated his rights under the equal protection clause of the Fourteenth Amendment when he made “an offensive racial statement over the unit P.A. system.” He contends that the other respondents are liable because they supervised respondent John Doe.

Petitioner has requested leave to proceed in forma pauperis. From his affidavit of indigency I conclude that he lacks the means to pay the filing fee in this case. (Although petitioner’s complaint relates to events that occurred while he was incarcerated, he was

released shortly before he filed this lawsuit, therefore he is not subject to the terms of the Prison Litigation Reform Act that apply only to prisoners. E.g., Kerr v. Puckett, 138 F.3d 321, 323 (7th Cir. 1998).)

The next step is determining whether petitioner's proposed action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e)(2). 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, because petitioner's allegations do not state a claim upon which relief may be granted, his complaint will be dismissed.

In his complaint, petitioner alleges the following facts.

FACTUAL ALLEGATIONS

At times relevant to his complaint, petitioner LaVar Bullock was a prisoner incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. He is no longer incarcerated.

Respondent John Doe is a correctional officer who worked in unit 10 A/B at the Columbia Correctional Institution. Respondent James Spangenberg is the 10 A/B unit manager at the Columbia Correctional Institution. Respondent Capt. Radke is the security director and respondent Greg Grams is the warden at the Columbia Correctional Institution.

Respondent Matthew Frank is the secretary of the Wisconsin Department of Corrections.

On April 18, 2006, respondent John Doe called for inmate workers to report for work over the unit loud speaker system. During this announcement, he stated that “only white workers” should report for work. Previously, the unit sergeant had instructed all volunteers for the outside work crew to line up, without referring to the prisoners’ race. After the announcement, petitioner felt fearful when dealing with the correctional officers at the Columbia Correctional Institution because he was concerned that he would be subjected to racial discrimination by other correctional officers.

DISCUSSION

Petitioner contends that respondent John Doe violated his constitutional right to equal protection when he announced over the prison loudspeaker system that only white prisoners should report to work on the outside work crew. Petitioner’s complaint is the second this court has received relating to an allegedly discriminatory statement about the race of volunteers for outdoor work made on April 18, 2006 at the Columbia Correctional Institution. Murphy v. Sainsbury, No. 07-C-0283-C (W.D. Wis. June 6, 2007). As I said in that case, 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 describe in his complaint in this case, or in the grievance filed with the institution (which he attached to his complaint), any other offensive behavior beyond respondent John Doe’s grossly inappropriate statement. He does not allege that he was deprived of an opportunity to earn money or other benefits for volunteering for the outside work crew. Instead, petitioner is concerned strictly with the fact that respondent made such an unprofessional and inappropriate comment and that, as a result, he feared that other correctional officers would subject him to racial discrimination. Accordingly, petitioner’s claim against respondent John Doe will be dismissed for failure to state a claim upon which relief may be granted.

Petitioner’s claims against the other respondents will likewise be dismissed. His sole theory regarding their liability appears to be that they were respondent John Doe’s

supervisors and therefore were responsible for his action and its effect. This theory fails for two reasons. First, the doctrine of respondeat superior, under which a supervisor may be held responsible for the acts of his or her subordinates, is not applicable in § 1983 cases. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-695 (1978). Liability under § 1983 arises only through a respondent's personal involvement in a constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994). In any event, because respondent John Doe's statement did not violate petitioner's constitutional rights, it could not form the basis for others' liability. Therefore, petitioner has failed to state a claim against respondents Spangenberg, Radke, Grams and Frank.

ORDER

IT IS ORDERED that:

1. Petitioner LaVar Bullock's complaint against respondents John Doe, James Spangenberg, Capt. Radke, Greg Grams and Matthew Frank is DISMISSED for petitioner's failure to state a claim upon which relief may be granted;

2. The clerk of court is directed to close the file.

Entered this 18th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge