

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

TROY J. OLMSTEAD,

Plaintiff,

v.

MEMORANDUM and ORDER
07-C-388-S

WILLIAM POLLARD, LT. SWIEKATOWSKI,
CAPT. STELLINGS, OFFICER WILLEMONT,
PETE ERICKSEN, JODINE PERTTU, KATHLEEN
BIERKE, MS. PALMER, MR. KIEULKE, MR. DUROFF,
RICHARD SCHNEIDER, LT. BOISEN, CAPT. MASON,
CAPT. HORNER, ROBERT HABLE, GARY BROUGHTON,
ELLEN RAY, MATTHEW FRANK, JOHN RAY, RICK
RAEMISCH and RICHARD VICTOR,

Defendants.

Plaintiff Troy J. Olmstead, an inmate at Green Bay Correctional, Institution, Green Bay, Wisconsin (GBCI), filed this civil action on July 18, 2007 and paid the filing fee. The Court reviews plaintiff's complaint pursuant to 28 U.S.C. 1915A(a).

Plaintiff alleges that defendants William Pollard, Pete Ericksen, Kathleen Bierke and Jodine Perttu are delivering food at GBCI in carts used for collecting inmate's dirty laundry and property. It is possible that plaintiff could prove a set of facts that would support an Eighth Amendment claim against these defendants for deliberate indifference to his health. Rhodes v. Chapman, 452 U.S. 337, 349 (1981). He will be allowed to proceed on this claim.

Plaintiff also alleges that he was denied due process in disciplinary proceedings. In Zinermon v. Burch, 439 U.S. 113 (1990), the United States Supreme Court held that a deprivation of an individual's liberty interest does not state a claim under the Fourteenth Amendment due process clause if adequate state post deprivation remedies exist. Petitioner has adequate state post deprivation remedies including administrative remedies, a state petition for a writ of habeas corpus and a state court action for damages. Plaintiff alleges that he pursued these remedies. Accordingly he will not be allowed to proceed on his Fourteenth Amendment due process claims.

Plaintiff also alleges that defendants William Pollard, Pete Ericksen, Mr. Duroff, Mr. Kieulke and Ms. Palmer denied him access to the courts while he was pursuing a post-conviction remedy. It is possible that plaintiff could prove a set of facts that support a denial of access to the courts claim. Lewis v. Casey, 518 U.S. 343, 351 (1996). He will be allowed to proceed on this claim.

Plaintiff also appears to be alleging that while at GBCi defendants Officer Willemon and Pete Ericksen interfered with his legal mail. He also alleges that while he was at the Wisconsin Secure Program Facility (WSPF) defendants Gary Broughton and Captain Mason interfered with his legal mail. It is possible that plaintiff could prove a set of facts that support an interference with legal mail claim against defendants Willemon, Ericksen,

Broughton and Mason. Martin v. Brewer, 830 F.2d 76, 78 (7th Cir., 1987). He will be allowed to proceed on this claim.

In conclusion plaintiff will be allowed to proceed on his Eighth Amendment claims against defendants Pollard, Erickson, Perttu and Bierke. He will be allowed to proceed on his denial of access to the Courts claim against defendants Pollard, Ericksen, Duroff, Kieulke and Palmer. He will also be allowed to proceed on his interference with mail claim against defendants Willemon, Erickson, Broughton and Mason. Since all the defendants were served, the remaining defendants will be dismissed from this action.

ORDER

IT IS ORDERED that plaintiff is allowed to proceed on his Eighth Amendment, denial of access and interference with mail claims against defendants Pollard, Ericksen, Perttu, Bierke, Duroff, Kieulke, Palmer, Willemon, Broughton and Mason as described herein.

IT IS FURTHER ORDERED that the remaining defendants and claims are DISMISSED.

Entered this 8th day of August, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge