

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

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ROGER KUBSCH,

Petitioner,

v.

DOUG BELLILE,

Respondent.  
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OPINION AND  
ORDER

07-C-419-C

This is a proposed civil action for money damages in which petitioner, a patient at the Sand Ridge Secure Treatment Facility, claims that his constitutional rights were violated when respondent forced him to sign a statement in which petitioner agreed to pay \$62 restitution for damage to property petitioner caused at the facility when he was upset. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the

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). Because respondent Roger Roye Kubsh did not deprive petitioner of any constitutional right, petitioner will not be granted leave to proceed in forma pauperis.

From petitioner's complaint, I draw the following allegations of fact.

#### ALLEGATIONS OF FACT

Petitioner Roger Kubsh is a patient at the Sand Ridge Secure Treatment Center in Sand Ridge, Wisconsin, confined under Wis. Stats. Chapter 980. Respondent Doug Bellile is a unit manager at the center.

On some unspecified date, petitioner arrived late for his computer class. Petitioner and his instructor, Amy, "got into an argument about [petitioner's] being late" and petitioner lost his temper and told her he was going back to his unit. When he got back to the unit, he asked "a staff member" if "she" would call the health services unit and ask petitioner's nurse to bring him some Lorazepam to help him calm himself. The staff member refused to make the call. Petitioner then asked the supervisor or the captain to call, and she, too, ignored petitioner. As petitioner was walking away, he called the supervisor or caption a "bitch." Petitioner then returned to his cell and slammed the door behind him. He looked out the door window and saw the captain on the phone. About twenty-five minutes later,

the security supervisor came to petitioner's unit, spoke with staff and then came to petitioner's cell to ask what was wrong. Petitioner began explaining that he had been late for computer class and during the explanation, began tearing down cork board in his room, cracked the bedroom door window and put a dent in a cabinet. Petitioner was removed from his room and placed in an administrative unit for seventy-two hours.

Subsequently, respondent Bellile asked petitioner to sign a reimbursement form for the damage petitioner did on his unit. Petitioner did not want to sign the form because he believed that if someone had called the nurse so that he could have obtained a calming drug, he would not have become physically destructive. Nevertheless, respondent told petitioner that if he didn't sign the form, he would be kicked out of the "compass foundation group" and sent back to the Wisconsin Resource Center. Given this threat, petitioner signed "under duress" an agreement to pay \$62 as restitution for the damage he caused.

### OPINION

Petitioner appears to be contending that his constitutional rights were violated when respondent threatened to transfer him to the Wisconsin Resource Center if he failed to take financial responsibility for the damage to property he caused when he lost his temper. The only relief he seeks is the return of his \$62 and a "cash settlement for the threat."

Unfortunately for petitioner, there is no constitutional right to be free from threats

from institution officials. DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000) (verbal abuse of prisoners by prison staff does not state claim under Constitution); Oltarzewski v. Ruggiero, 830 F.2d 136 (9th Cir. 1987) (prison official's use of vulgar language did not violate inmate's civil rights); Martin v. Sargent, 780 F.2d 1334 (8th Cir. 1985) (inmate's rights not violated by threat that he would have "bad time" if he refused to cut his hair and shave his beard). Therefore, petitioner's claim against respondent Bellile is legally meritless and his request for leave to proceed in forma pauperis in this action must be denied.

#### ORDER

IT IS ORDERED that petitioner is DENIED leave to proceed in forma pauperis in this action because his claim that respondent Doug Bellile violated his constitutional rights when he threatened to transfer petitioner to the Wisconsin Resource Center if he did not agree to pay restitution for property damage petitioner caused is legally meritless. The clerk of court is directed to enter judgment in respondent's favor dismissing this case with

prejudice.

Entered this 3d day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge