

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

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CORNELIUS R. MADDUX #233092 and  
STANLEY FELTON #283330,

Petitioners,

v.

WILLIAM POLLARD, PETER ERICKSEN,  
HEYLEY HERMANN, LT. SWIEKATOWSKI,  
CAPT. MARK LESATZ, CAPT. BRANT,  
LIZ LEMERY, KATHLEEN BIERKE, LT.  
LAMBRECHT, MICHAEL MOHR, MATTHEW  
FRANK, SANDRA HAUTAMAKI, MICHAEL  
BAENEN, RICK RAEMISCH and approximately  
three JOHN DOES,

Respondents.  
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ORDER

08-cv-227-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the Western District of Wisconsin receive the attention they deserve in a timely manner. At

this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming jurisdiction over the case.

This is a proposed civil action for declaratory and monetary relief brought under 42 U.S.C. § 1983. Petitioners Cornelius R. Maddox and Stanley Felton request leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavits petitioners have given the court, I conclude that they are unable to prepay the full fee for filing this lawsuit. Both petitioners have paid the initial partial payments they were assessed in accordance with § 1915(b)(1).

Because petitioners are prisoners, their complaint must be screened pursuant to 28 U.S.C. § 1915(e)(2). In performing that screening, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, it must dismiss the complaint if, even under a liberal construction, it is legally frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 42 U.S.C. § 1915(e).

I understand petitioners to allege that there were 17 people (respondents) involved in a conspiracy at the Green Bay Correctional Institution to retaliate against them for their involvement in a "legal study group" and their refusal to undermine inmate Madyun's efforts to act as a jailhouse teacher of law. Because at this point it appears that petitioner Felton's

participation in a legal study group was an exercise of his First Amendment right of free speech, I conclude that he has stated a claim against several respondents for their retaliation against him for exercising a constitutional right. However, the allegations make it plain that petitioner Maddox was not a part of the legal study group. Therefore, he fails to state a claim for retaliation for his participation in the group. Moreover, petitioners' claim that they were the target of retaliation for refusing to help undermine inmate Madyun's legal teaching fails to state a claim upon which relief may be granted because that conduct is not protected by any constitutional right.

In their complaint, petitioners allege the following facts.

## ALLEGATIONS OF FACT

### A. The Parties

Petitioner Cornelius R. Maddox is a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin, and was a prisoner there during all times relevant to the complaint. Petitioner Stanley Felton is a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. He was incarcerated at the Green Bay Correctional Institution during all times relevant to the complaint.

Respondents Capt. Lesatz, Capt. Brant, Lt. Lambrecht and Lt. Swiekatowski are all correctional supervisors at the Green Bay Correctional Institution. Respondent William

Pollard is the warden, respondent Peter Ericksen is the security director and respondent Liz Lemery is the associate warden business and finance supervisor at the Green Bay Correctional Institution. Respondents Kathleen Bierke, Michael Mohr and Heyley Hermann are all complaint examiners at the Green Bay Correctional Institution. Respondents Sandra Hautamaki and Rick Raemisch are complaint examiners for the Department of Corrections in Madison, Wisconsin. Respondent Matthew Frank is Secretary of the Division of Corrections. Respondents John Doe 1, John Doe 2 and John Doe 3 are all correctional officers at the Green Bay Correctional Institution.

B. Conspiracy and Retaliation for Legal Study Group

In 2005, petitioner Felton was a part of a group of prisoners who were learning basic law under the tutelage of another inmate, Shaheed Madyun. Staff members at the Green Bay Correctional Institution wanted to break up the “legal study group” in which petitioner Felton was participating.

In an effort to break up the group, respondent Brant approached both petitioners at separate times asking whether they would be willing to help undermine inmate Madyun’s efforts with the group. Petitioner Felton refused the request and on April 29, 2005, respondent Brant responded by filing a “false” conduct report against him, charging him with violating prison rules regarding the unauthorized transfer of property. On May 12, 2005,

petitioner Felton received a hearing and was found guilty of lying and unauthorized transfer of property. He received 120 days of disciplinary separation. On May 18, 2005, Felton appealed his discipline; respondent Pollard reduced Felton's time in separation to 60 days. Also on May 12, Felton challenged the charge by filing an inmate complaint with the prison. On August 18, 2005, the complaint was dismissed.

In September 2005, petitioner Maddox initially agreed to assist respondent Brant in undermining the legal study group because Brant threatened Maddox with being put into segregation for unauthorized use of the mail if he did not assist. Brant told Maddox to transfer sums of money to several legal group members' inmate accounts, including petitioner Felton's and inmate Madyun's, so that each inmate could be charged with unauthorized transfer of property. Although petitioner Maddox objected to putting money in Madyun's account because he did not know Madyun well enough, he cooperated initially by having his sister transfer the money. On September 18, 2005, however, Maddox informed Madyun of the set-up.

Even though respondent Brant had instructed Maddox to make the fund transfers, on September 19, 2005, Maddox was placed in temporary lock-up while Brant conducted an investigation into Maddox's transfer of funds to other prisoners. On September 26, 2005, Brant filed a conduct report charging Maddox with unauthorized transfer of property and unauthorized use of the mail. On October 1, 2005, Maddox received a hearing

regarding the charges. The hearing was held before respondent Lesatz, who knew that Brant had instructed Maddox to make the transfers. Lesatz found Maddox guilty of the charges and disciplined him with 180 days of disciplinary separation. The money that had been transferred was ordered destroyed. On October 2, 2005, Maddox appealed the charges but respondent Pollard denied the appeal on March 20, 2006. On February 23, 2006, Maddox filed two inmate complaints with the prison regarding the charges. Both complaints were rejected by respondent Bierke on February 27, 2006. Members of the legal group believed that Maddox had “snitched” on them and for this reason he was twice beaten up by other inmates.

Because petitioner Maddox had transferred money into petitioner Felton’s prison account, on September 27, 2005, respondent Brant charged Felton with unauthorized transfer of property. On October 6, 2005, respondent Lambrecht presided over petitioner Felton’s hearing regarding this charge. Felton provided evidence that he had told respondent Lemery, in the finance office, that he would not accept the funds. Nevertheless, Lambrecht found Felton guilty. Felton believes respondents Brant and Ericksen told Lambrecht to find Felton guilty. Felton was given 120 days of disciplinary separation. On October 10, 2005, petitioner Felton appealed the finding of guilt but on November 22, 2005, respondent Pollard affirmed Lambrecht’s decision. Felton filed two inmate complaints regarding the charge and both were dismissed.

### C. Retaliation Against Petitioner Felton for Filing Inmate Complaint

In January 2007, petitioner Felton filed a group inmate complaint regarding conditions of confinement. The complaint was confiscated. In retaliation for having filed the complaint, Felton was placed in solitary confinement, transferred to the Wisconsin Secure Program Facility and physically assaulted.

## DISCUSSION

Petitioners appear to be alleging that prison officials engaged in a conspiracy to retaliate against them because of two types of conduct: (1) petitioners' involvement in a "legal study group" and (2) petitioners' refusal to cooperate in a plot to undermine inmate Madyun's efforts to teach basic law. Prisoners may bring an action for retaliation under § 1983 when the retaliation occurs in response to their exercise of a constitutional right. DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). To satisfy Fed. R. Civ. P. 8, however, petitioners must do more than say the word "retaliation" in their complaint. Rather, they must identify the constitutionally protected conduct in which they engaged. Equal Employment Opportunity Commission v. Concentra Health Services, Inc., 496 F.3d 773, 781 (7th Cir. 2007). Although a petitioner need not allege a chronology of events from which retaliation could be plausibly inferred, Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002), at a minimum a petitioner needs to specify the protected conduct and the

act of retaliation so that the respondents are put on notice of the claim and can file a responsive answer. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002).

I understand petitioner Felton to allege that he was the target of retaliation because he participated in a legal study group, which is an exercise of Felton's First Amendment right to free speech. "[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974). At this early stage, I will assume that petitioner Felton was exercising his First Amendment right to free speech when he participated in the legal study group to discuss legal matters regarding the prison system. Because petitioner has identified an act of retaliation, namely that respondents Brant, Ericksen, Lambrecht and Lemery conspired to have him fined and placed in disciplinary separation, I will allow petitioner to proceed on his First Amendment retaliation claim against those four respondents.

However, the allegations regarding Felton's First Amendment retaliation claim do not support a claim that any of the other respondents were personally involved in retaliating against petitioner Felton for his exercise of a right to free speech. It is well established that liability under § 1983 must be based on a respondent's personal involvement in the constitutional violation. See, e.g., Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994). "A causal connection, or an



affirmative link, between the misconduct complained of and the official sued is necessary.” Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). None of the allegations in the complaint support an inference that any respondents other than Brant, Ericksen, Lambrecht and Lemery knew that petitioner Felton was part of the legal study group or that any of the others were aware that the October 6, 2005 “mock due process hearing” was used to retaliate against Felton for his participation in the legal group. Therefore, petitioner Felton may not proceed on his First Amendment retaliation claim against any respondents other than respondents Brant, Ericksen, Lambrecht and Lemery.

Regarding petitioner Maddox, the allegations in the complaint do not support an inference that he was retaliated against for involvement in the legal study group because the allegations suggest he was not a part of the legal study group. Petitioners listed inmates that were alleged members of the Madyun legal study group in two separate sections of the complaint (Cpt. ¶¶13, 23). Neither list included petitioner Maddox. Also, petitioners allege that petitioner Maddox did not know Madyun well enough “to justify having funds sent to [Madyun] even as a friend.” (Cpt. ¶28.) Therefore, petitioner Maddox fails to state a claim that he was retaliated against because of his involvement in the legal study group.

Petitioners allege further that they were the target of retaliation because they refused to cooperate in a plot to undermine inmate Madyun’s efforts to teach basic law. They contend that petitioner Felton refused outright to undermine Madyun and that petitioner

Maddox cooperated initially but then changed his mind and informed Madyun of the set up. I am unaware of a constitutionally protected right that might be triggered by a refusal to cooperate in a plot to set up other inmates. Therefore, petitioners have failed to state a claim for retaliation regarding their refusal to undermine inmate Madyun's efforts to teach basic law.

Petitioners allege one additional instance in which petitioner Felton was retaliated against for acting as a jailhouse lawyer. Petitioners allege that Felton was retaliated against for being the designated spokesperson on a group inmate complaint that was filed regarding conditions of confinement. Although petitioner Felton alleges that he was placed in solitary confinement, transferred to Boscobel and physically assaulted because he had filed the group inmate complaint, he fails to allege who retaliated against him. As stated earlier, liability under § 1983 hinges on a state actor's personal involvement in a constitutional deprivation. Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003). Without alleging who did the retaliating, petitioner Felton fails to state a claim under § 1983.

Finally, construing petitioners' complaint liberally, I understand them to be raising a claim that they were deprived of liberty in violation of the due process clause. Petitioners appear to be alleging that being placed in disciplinary separation or segregation is a deprivation of liberty. However, the Court of Appeals for the Seventh Circuit has held repeatedly that confinement in segregation does not trigger the protections of the due

process clause. Lekas v. Briley, 405 F.3d 602, 612 (7th Cir. 2005); Hoskins v. Lenear, 395 F.3d 372, 374-75 (7th Cir. 2005). Therefore, petitioners have failed to state a claim for a due process violation.

After screening petitioners' complaint all that remains is the claim that respondents Brant, Ericksen, Lambrecht and Lemery made petitioner Felton the target of retaliation for Felton's exercise of his First Amendment right of free speech through participation in inmate Madyun's legal study group. Petitioner Maddox cannot remain a plaintiff on the remaining claim, because the claim does not involve a violation of any of petitioner Maddox's constitutional rights. Therefore, petitioner Maddox will be dismissed from this lawsuit.

## ORDER

IT IS ORDERED that:

1. Petitioner Stanley Felton's request for leave to proceed in forma pauperis is GRANTED with respect to his claim that respondents Capt. Brant, Lt. Lambrecht, Peter Ericksen and Liz Lemery retaliated against him for exercising his First Amendment right of free speech through participation in inmate Madyun's legal study group;

2. Petitioners Cornelius R. Maddox's and Stanley Felton's request for leave to proceed in forma pauperis is:

a. DENIED with respect to the claim that respondents retaliated against both

petitioners for refusing to undermine inmate Madyun's efforts to teach basic law;

b. DENIED with respect to the claim that petitioners were deprived of liberty in violation of the due process clause; and

c. DENIED with respect to petitioner Maddox's claim that respondents retaliated against him for participating in inmate Madyun's legal study group.

3. Petitioner Cornelius R. Maddox is DISMISSED from this lawsuit.

4. Respondents Capt. Lesatz, Lt. Swiekatowski, William Pollard, Kathleen Bierke, Michael Mohr, Heyley Hermann, Sandra Hautamaki, Rick Raemisch, Matthew Frank, Michael Baenen, John Doe 1, John Doe 2 and John Doe 3 are DISMISSED from the lawsuit.

5. A strike will be recorded against petitioners Cornelius R. Maddox and Stanley Felton in accordance with this court's April 28, 2008 order (dkt. #4) and § 1915(g);

6. The unpaid balance of petitioner Stanley Felton's filing fee is \$337.00; the unpaid balance of petitioner Cornelius R. Maddox's filing fee is \$338.31; petitioners are obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

7. For the remainder of the lawsuit, petitioner Felton must send respondents a copy of every paper or document that he files with the court. Once petitioner Felton has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner Felton unless

he shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

8. Petitioner Felton should keep a copy of all documents for his own files. If he does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

9. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner Felton's complaint and this order will be sent to the Attorney General for service on the state defendants.

Entered this 2nd day of July, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge