

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

JAMES SMITH,

Petitioner,

v.

TOM RUBENZER,

Respondent.

ORDER

08-cv-436-bbc

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is a civilly committed patient at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. In an earlier order, I found that petitioner qualified financially for pauper status on the condition that he prepay \$15.33 of the \$350 filing fee. Petitioner has done that. However, before I can allow him to proceed on the merits of his complaint under the in forma pauperis statute I must find that his complaint passes screening under 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 conclude that petitioner's allegations of violation of his equal protection rights fails to state a claim upon which relief may be granted.

The following facts are from petitioner's complaint and the attachment to the complaint.

ALLEGATIONS OF FACT

Respondent Tom Rubenzer, the work supervisor for patients at Sand Ridge Secure Treatment Center, gave petitioner a "program notification" charging him with misbehavior in connection with his work. According to the "program notification," petitioner had refused to listen to several repeated instructions and told respondent, "You aren't my boss. . . . [Y]ou can't tell me what to do." When presented with the notification and asked to sign it, petitioner asked "What's this?" and refused to sign it. Because of "the severity of his actions," petitioner was suspended from his institutional job for 90 days. "The rules" state that a patient must receive three notifications before any action is taken.

DISCUSSION

Petitioner contends that he did not receive "equal treatment" under the rules at Sand Ridge Secure Treatment Center because he was disciplined after receiving only one

notification when the rules require that a patient receive three notifications before any “action” is taken. I understand petitioner to be alleging that he was denied equal protection claim under the Fourteenth Amendment. However, the equal protection clause does not require the government to treat everyone exactly the same regardless of the circumstances; instead, it requires that “all persons similarly situated should be treated alike.” City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 439 (1985).

Although equal protection claims are most commonly brought by members of disfavored classes or by those attempting to enforce fundamental rights, “an individual may state a ‘class of one’ equal protection claim if []he has ‘been intentionally treated differently from others similarly situated and [] there is no rational basis for the difference in treatment.’” Martin v. Shawano-Gresham School District, 295 F.3d 701, 712 (7th Cir. 2002) (quoting Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)). Here, petitioner does not suggest that he was treated differently for a reason that would require more than a rational basis to survive constitutional scrutiny.

Under the rational basis standard, “courts presume the constitutionality of the government’s classification and it will not be set aside if any [set] of facts reasonably may be conceived to justify it.” Wroblewski v. City of Washburn, 965 F.2d 452, 459 (7th Cir. 1992) (citations omitted). To state an equal protection claim governed by rational basis review, petitioner’s factual allegations must suggest some basis “sufficient to overcome the

presumption of rationality that applies to government classifications.” St. John’s United Church of Christ v. City of Chicago, 502 F.3d 616, 639 (7th Cir. 2007) (quoting Wroblewski, 965 F.2d at 460). If a rational basis for the government’s actions remains “conceivable and plausible” in the face of petitioner’s allegations, petitioner’s equal protection claim should be dismissed for failure to state a claim. Wroblewski, 965 F.2d at 460. Petitioner’s allegations do not overcome the presumption of rationality.

Because I understand petitioner to be alleging a class of one equal protection claim, the governmental action or classification is respondent’s decision to suspend petitioner from his job after one notification. Simply alleging that he was suspended from his job after only one “program notification” does not itself suggest that there could be no rational basis for his suspension. Moreover, the notification attached to petitioner’s complaint provides a conceivable and plausible rational basis for respondent’s decision, that being the “severity” of petitioner’s actions. Therefore, petitioner fails to overcome the presumption of rationality afforded to government action and he will be denied leave to proceed on his equal protection claim.

ORDER

IT IS ORDERED that:

1. Petitioner James Smith’s request for leave to proceed in forma pauperis on his

equal protection claim is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;

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

Entered this 15th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge