

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

JAMES EDWARD GRANT,

Petitioner,

v.

DANE COUNTY JAIL STAFF,
DANE COUNTY ADMINISTRATOR,
DEPUTY ZEIGLER, DEPUTY MAICKE,
DEPUTY JOEL, DEPUTY WILSON and
ALL DEPUTY SHERIFFS OF THE DANE
COUNTY ADMINISTRATION/JAIL STAFF,

Respondents.

OPINION and ORDER

08-cv-685-slc¹

In this lawsuit brought pursuant to 42 U.S.C. § 1983, petitioner James Edward Grant alleges that respondents violated his constitutional rights by failing to release him the day the judge set a signature bond. Petitioner has requested leave to proceed in forma pauperis and has paid the initial partial filing fee. (Although petitioner's filing fee came in after the December 26, 2008 deadline he was given for submitting the fee, I will reopen the case and take his request for leave to proceed in forma pauperis under advisement.)

¹Because 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. For the purpose of issuing this order only, I am assuming jurisdiction over the case.

Because petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if petitioner has had three or more lawsuits or appeals dismissed for lack of legal merit or if his complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a respondent who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2). Because petitioner is a pro se litigant, his complaint will be construed liberally as it is reviewed for these defects. Haines v. Kerner, 404 U.S. 519, 521 (1972). Petitioner will be denied leave to proceed because he was not entitled to additional process within the one-day delay he suffered before his release and because the complaint does not allow an inference to be drawn that any of the respondents identified knew enough about his situation to be held liable under the due process clause.

In his proposed complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

On June 23, 2008, the judge handling one of petitioner's criminal cases, Dane County Case No. 2007CF2329, ordered that petitioner could be released from jail on a signature bond. (A review of the electronic records maintained on Wisconsin Circuit Court Access Program (<http://wcca.wicourts.gov>) reveals that petitioner had been held on a cash bond in the case since December 12, 2007). When petitioner returned to his jail cell, a deputy sheriff came and signed a signature bond, which included bail conditions set in a stalking

case that had already been dismissed, Dane County Case No. 2007CF2200. (Although petitioner finds this to be “odd,” it is consistent with the judge’s order setting the signature bond, which required petitioner to “abide by bail conditions set in [the other case],” as indicated in the electronic court record events available on Wisconsin Circuit Court Access Program.)

At some point after petitioner had gotten his signature bond, respondents Zeigler and Maicke left and second-shift employees took their place. Petitioner told respondent Joel that he had been given a signature bond. Respondent Joel checked, then came to petitioner laughing, saying, “You are not going anywhere” and explained that although he saw that one of petitioner’s cases had been dismissed and a signature bond had been signed in another one, the jail needed to confirm with the records department that petitioner could leave. However, the records could not be confirmed until the next day because the clerk of courts and records department were not available during second shift. Respondent Wilson told petitioner over the intercom that petitioner should “know that [he was] not going anywhere with those stalking charges and all.”

Petitioner was released the next day. A deputy Schiro let petitioner call his attorney, who made several calls on his behalf. A deputy Waylor then made the necessary call for petitioner’s release.

OPINION

Once a person has been charged with a crime but before he is convicted, “the question whether the fact, manner or duration of his continued confinement is unconstitutional” falls under the due process clause. Wilkins v. May, 872 F.2d 190, 193 (7th Cir. 1989). In this case, there is no question that petitioner received “process” regarding his right to pretrial release: the judge ordered his release on a signature bond. Rather, petitioner’s concern is the delay created by jail officials in acting on the judge’s order. Within this framework, the question is whether petitioner was entitled to additional “process” before his release was delayed one more day. He was not. As the Supreme Court explained in Baker v. McCollan, 443 U.S. 137, 145-46 (1979), minor delays created by the division of function between different government bodies involved in a criminal defendant’s process do not violate due process. In Baker, the Supreme Court found no violation of due process where a suspect was held for several days for the crimes committed by another person, despite his protests of mistaken identity. Id. at 140-41. Under Baker, respondents’ failure to release petitioner the same day his signature bond was signed does not amount to a violation of due process.

Even if the minor delay in petitioner’s release were worthy of constitutional attention, petitioner’s allegations would not suffice to establish that any respondent he identifies violated his due process rights. Sivard v. Pulaski County, 959 F.2d 662 (7th Cir. 1992) (due process violation requires that jail official knows that inmate is being detained wrongfully and continues to detain him in spite of that knowledge). The allegations do not allow the

drawing of an inference that any of the identified respondents had that type of knowledge. There is no suggestion that respondents Zeigler or Maicke even knew about his signature bond; respondents Joel and Wilson could not release petitioner because the records department and clerk of courts were closed and they were required to confirm his release; and the other respondents identified in the complaint were on duty the day petitioner was released and helped him obtain that release.

Next, petitioner states that his delay was manufactured “out of retaliation.” However, petitioner cannot proceed on this claim because he does not identify *who* acted in retaliation, describe what prompted the retaliatory act or offer any other plausible basis for inferring that any respondent actually retaliated against him, as he would be required to do if he were attempting to assert a claim for retaliation. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (claim for retaliation requires allegations describing both retaliatory act and protected act that prompted retaliation).

In short, the allegations in petitioner’s complaint do not allow an inference to be drawn that any respondent had sufficient knowledge or intent to be held liable for due process violations or retaliation. Therefore, I will deny petitioner’s request for leave to proceed in forma pauperis and dismiss his case for failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that:

1. Petitioner James Edward Grant's request for leave to proceed in forma pauperis is DENIED on his claim that respondents violated his constitutional rights by delaying his pretrial release from jail on a signature bond and that claim is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;

2. Petitioner is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at Dodge Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

3. A strike will be recorded against petitioner pursuant to § 1915(g); and

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

Entered this 15th day of January, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge