

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

PATRICK B. JOHNSON,

Plaintiff,

v.

ORDER

09-cv-178-bbc

RANDY STAMMAN, Sauk Co. Jail Sheriff
and WISCONSIN DEPARTMENT
OF CORRECTIONS ADMINISTRATION,

Defendants.

This is a proposed civil action for monetary and injunctive relief brought pursuant to 28 U.S.C. § 1983. Plaintiff Patrick B. Johnson alleges that since he was transferred from the Dodge Correctional Institution to the Sauk County jail, he has been discriminated against by being denied the same rights and privileges as inmates housed at the Wisconsin Department of Corrections.

Now before the court is plaintiff's request for leave to proceed under the in forma pauperis statute. 28 U.S.C. § 1915. Plaintiff has made his initial partial payment in accordance with 28 U.S.C. § 1915. However, because plaintiff is a prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims

that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

The facts alleged are simple. Plaintiff alleges that defendants Wisconsin Department of Corrections Administration and Randy Stamman violated his rights by transferring him to the Sauk County jail, where plaintiff could not receive the same rights and privileges afforded to other state inmates at state prisons. According to plaintiff's complaint, inmates at the Sauk County jail are not afforded the opportunity to work and must pay higher prices for canteen products than prisoners at the Wisconsin Department of Corrections. In addition, plaintiff alleges that despite his classification as a medium custody inmate, the Sauk County jail housed him in a maximum custody facility unit. Because plaintiff is housed in this unit, he does not have access to the gym, has to go through three doors to get outside and does not have a key to his cell door.

Although plaintiff cites Wis. Stat. § 106.50(2)(g), (m) and (r) as the basis for his claim, he may not proceed under this statute because it is directed at eliminating unlawful discrimination in housing practices based on sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or

ancestry. Wis. Stat. § 106.50(1). In this case, plaintiff is not bringing suit for a denial of housing or because he is being discriminated against as a member of a protected class. Moreover, it is unlikely that the statute was meant to apply to inmates housed in prison or jail facilities, as the statute discusses residential housing. This, however, does not extinguish his complaint. A complaint is not subject to dismissal simply because it includes an incorrect legal theory or no legal theory at all. Jogi v. Voges, 480 F.3d 822, 826 (7th Cir. 2007) (“It is established, however, that complaints need not plead legal theories.”); Simpson v. Nickel, 450 F.3d 303, 305 (7th Cir. 2006) (“One pleads ‘claims’ (which is to say, grievances) rather than legal theories.”).

Plaintiff’s complaint is more appropriately understood as a complaint that defendants are not affording him equal protection in violation of the Fourteenth Amendment. However, even if I recharacterize his claim in this manner, a number of problems remain. First, one of the named defendants is the Wisconsin Department of Corrections Administration. The Supreme Court has held that “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989); see also Ryan v. Illinois Department of Children and Family Services, 185 F.3d 751, 758 (7th Cir.1999) (holding that state agency was not a “person” under § 1983).

Even if plaintiff intended to sue individual members of the Wisconsin Department of Corrections for discriminating against him by transferring him to the Sauk County jail,

his allegations are still insufficient. To state an equal protection claim, plaintiff must allege that defendant Wisconsin Department of Corrections Administration acted with discriminatory purpose in its decision to transfer inmates to the Sauk County jail. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1948 (2009). In other words, plaintiff must allege that defendant adopted and implement the policy at issue “not for a neutral . . . reason but for the purpose of discriminating on account of race, religion, or national origin.” Id. at 1949. Moreover, equal protection claims are also subjected to a presumption of rationality. Wroblewski v. City of Washburn, 965 F.2d 452, 459 (7th Cir. 1992) (“[C]ourts presume the constitutionality of the government's classification and it will not be set aside if any state of facts reasonably may be conceived to justify it.”); St. John's United Church of Christ v. City of Chicago, 502 F.3d 616, 639 (7th Cir. 2007) (At pleading stage, petitioner must allege facts “sufficient to overcome the presumption of rationality that applies to government classifications”) (quoting Wroblewski, 965 F.2d at 460).

Plaintiff does not allege that he was mistreated because of his membership in some protected group. In addition, he does not allege that defendant Wisconsin Department of Corrections Administration transferred him or other inmates to the Sauk County jail because they would be treated differently from other state prisoners. Last, plaintiff has not overcome the presumption of rationality in defendant’s decision to transfer him from a state prison facility to the Sauk County jail. Nothing in his complaint suggests that he was transferred

to the Sauk County jail for anything other than administrative purposes. Without any allegations that the transfer decision was made with the intent to discriminate or treat plaintiff differently, the complaint fails to state a claim against defendant Wisconsin Department of Corrections Administration and his claims and this defendant will be dismissed.

Second, to state a claim for a violation of his right to equal protection against defendant Richard Stamman, plaintiff would have to allege that defendant Stamman was treating him differently from other inmates at Sauk County jail without a rational basis for doing so. Hudson v. Palmer, 468 U.S. 517, 523 (1984). Plaintiff stated in his complaint states that all inmates at the Sauk County jail are denied the ability to work and that all inmate are charged prices that are greater than those charged at the Wisconsin Department of Corrections. Therefore, plaintiff's complaint shows that he cannot prevail on his equal protection claim against defendant Stamman on these grounds because he alleges that the sheriff treats all inmates at Sauk County jail in the same way. To the extent that plaintiff is being treated differently from inmates in state prison facilities on these grounds, that is not something for which defendant Stamman may be held liable.

In addition, plaintiff alleges that defendant Stamman has violated his rights by placing him in a maximum custody unit despite his classification as a medium custody inmate at Dodge Correctional Institution. However, plaintiff's complaint does not state or

suggest that defendant Stamman placed him in maximum custody with the intent to discriminate against him or treat him differently. Iqbal, 129 S. Ct. at 1948. Moreover, he has failed to overcome the presumption of rationality in defendant Stamman's decision to place him in maximum custody for anything other than administrative purposes. Wroblewski, 965 F.2d at 460 (plaintiff must allege facts to overcome presumption of rationality). Accordingly, plaintiff's complaint also fails to state a claim for a violation of his right to equal treatment against defendant Stamman and his claims and this defendant will be dismissed.

ORDER

IT IS ORDERED that plaintiff Patrick B. Johnson's request for leave to proceed in forma pauperis is DENIED on his claim that defendant Randy Stamman and Wisconsin

Department of Corrections violated his equal protection rights and that claim is DISMISSED for failure to state a claim upon which relief may be granted. The clerk of court is directed to close this case.

Entered this 9th day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge