

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

NATANAEL RIVERA,

Plaintiff,

v.

NICHOLAS JOHNSON,

Defendant.

ORDER

10-cv-286-bbc

On June 25, 2010, I screened plaintiff Natanael Rivera's complaint and denied him leave to proceed on his claim that defendant Nicholas Johnson violated his right to freedom of speech and expression under the First Amendment by prohibiting him from writing his return address sideways on his outgoing mail. Specifically, I concluded that plaintiff had not engaged in conduct protected as speech by the First Amendment, and accordingly, I dismissed plaintiff's complaint. Plaintiff has now filed a motion for leave to file an amended complaint and a proposed amended complaint. Although plaintiff's motion is entitled "motion for leave to file an amended complaint," his proposed amended complaint does not contain any new or altered allegations. In his proposed amended complaint, plaintiff contends that defendant's refusal to mail plaintiff's letters violates his First Amendment right

to correspond with his friends and family, suppresses the speech contained in his letters and violates his right of access to the courts. Plaintiff is merely advancing new legal theories on which to support his claim against defendant. Thus, I understand the motion to be one for reconsideration of the court's order dismissing plaintiff's original complaint for failure to state a claim. However, even under plaintiff's newly proposed legal theories, he has not stated a claim against defendant.

Plaintiff has not stated a claim for denial of access to the courts. To state a claim of denial of access to the courts, plaintiff must allege facts from which an inference can be drawn that the denial of access caused him an "actual injury," Lewis v. Casey, 518 U.S. 343, 351 (1996). At a minimum, a plaintiff alleging a denial of access to the courts must identify an "arguable" and "non-frivolous" underlying cause of action, Christopher v. Harbury, 536 U.S. 403, 415 (2002), and describe how that cause of action has been prejudiced by the actions of prison officials. Lewis, 518 U.S. at 351; see also Walters v. Edgar, 163 F.3d 430, 434 (7th Cir. 1998) ("[I]f the denial [of access to the courts] has had no effect on the legal relief sought by the plaintiff, no right has been violated."). Plaintiff has pointed to no underlying cause of action that he is litigating or wishes to litigate that has been prejudiced by defendant's refusal to mail plaintiff's letters. Further, it is clear from plaintiff's correspondence with this court that he is able to correspond with the court so long as he does not write his return address sideways on the envelope. Presumably, plaintiff can also

correspond with his attorney so long as he writes his address in the top left corner of his envelopes. Therefore, because plaintiff has not alleged that his ability to litigate any matter was affected by defendant's actions, he has not stated a claim for denial of access to the courts.

Also, plaintiff has not stated a claim for violation of his First Amendment right to correspond with his friends and family or for suppression of the speech contained in his letters. As I explained in the June 25 order dismissing plaintiff's complaint, prisoners have protected First Amendment interests in both sending and receiving mail. Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). Regulations or practices that censor or restrict a prisoner's outgoing mail must "further an important or substantial governmental interest unrelated to the suppression of expression," and "must be no greater than is necessary or essential to the protection" of that interest." Koutnik v. Brown, 456 F.3d 777, 784 (7th Cir. 2006) (quoting Procunier v. Martinez, 416 U.S. 396, 413 (1974)). However, defendant's refusal to send letters on which plaintiff has written his return address sideways is not a restriction on plaintiff's right or ability to send outgoing mail. Plaintiff is free to send mail to his friends, family and attorney so long as he writes his address in the top corner of his envelopes. Also, defendant's actions are not suppressing or censoring the contents of plaintiff's mail because defendant's refusal to send plaintiff's mail is unrelated to the contents of plaintiff's mail. In sum, plaintiff does not have a constitutional right to send

letters with his return address written sideways. Although plaintiff does have a constitutional right to send mail, defendant's actions have not infringed that right. Therefore, plaintiff has failed to state a claim on which relief may be granted.

ORDER

IT IS ORDERED that plaintiff Natanael Rivera's motion for reconsideration, dkt. #8, is DENIED.

Entered this 8th day of July, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge