IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DAWON JONES,

Plaintiff,

v.

JEFFREY PUGH, Warden;
KEN MILBECK, Unit Supervisor;
C. ANDERSON, Social Worker;
and SATRURICS,

Defendants.

OPINION and ORDER

10-cv-633-slc[1]

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Pro se plaintiff Dawon Jones is a prisoner at the Stanley Correctional Institution in Stanley, Wisconsin. He has filed a proposed complaint in which he contends that prison officials have subjected him to conditions that violate his rights under the Eighth Amendment and the equal protection clause. He has made an initial partial payment in accordance with 28 U.S.C. § 1915(b)(1).

Because plaintiff is a prisoner, I must screen the complaint to determine whether it

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[1] Because consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action, I assuming jurisdiction over this case for the purpose of this order.

states a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A. Plaintiff alleges that he spent 90 days in segregation from March 2010 to June 2010 and that, after he was released from segregation, he was placed in a "transition" program, which continued to subject him to deprivations "contrary to any compelling penological interest." On June 14, the first day plaintiff was out of segregation, he was restricted to his cell at all times, except 9:00 a.m. to 10:50 a.m., "dinner" and 9:30 p.m. to 10:00 p.m. Other prisoners in plaintiff's pod "had free movement at all times." On June 15, plaintiff received out of cell time in the dayroom and recreation yard, but he was not allowed to use the outside walking track, as the other prisoners were. Plaintiff received "extra punishment" for another three weeks. He was "not able to eat seconds like other prisoners." He was "forced to participate in a six-week work assignment program to be able to leave this transition phase."

These allegations do not state a claim upon which relief may be granted under the Eighth Amendment or the equal protection clause. "[T]he Eighth Amendment forbids cruel and unusual punishments; it does not require the most intelligent, progressive, humane, or efficacious prison administration." Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995). In the context of prison conditions, this means that the plaintiff must show that he was subjected to "extreme deprivations." Hudson v. McMillian, 503 U.S. 1, 8-9 (1992). In particular, the question is whether the prisoner was deprived of "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). These

necessities include food, clothing, shelter, medical care and safety. Farmer v. Brennan, 511 U.S. 825, 832 (1994).

Plaintiff's allegations suggest that his privileges were limited for a short time, but they do not suggest that his health was at risk or that he was otherwise subjected to a substantial risk of serious harm. As a general matter, placement in segregation does not implicate the Eighth Amendment unless the conditions in segregation are unsanitary or dangerous. Higgason v. Farley, 83 F.3d 807, 809 (7th Cir.1996); Gillis v. Litscher, 468 F.3d 488, 489 (7th Cir. 2006).

With respect to the other alleged deprivations, plaintiff does not suggest that he was receiving inadequate nutrition or exercise. Prisoners do not have a constitutional right to "seconds" or to participate in a particular recreational activity. Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir.1996) (prisoner's right to exercise under Eighth Amendment is implicated "in extreme and prolonged situations where movement is denied to the point that the inmate's health is threatened"; prisoners are entitled to "nutritionally adequate food"). Finally, to the extent plaintiff is challenging the requirement to work in order to be taken off the transition program, courts have rejected claims that prison officials may not require prisoners to work. Wendt v. Lynaugh, 841 F.2d 619, 620 (5th Cir. 1988); United States v. Drefke, 707 F.2d 978 (8th Cir. 1983).

With respect to plaintiff's claim under the equal protection clause, plaintiff seems to

believe that the Fourteenth Amendment requires prison officials to treat all prisoners exactly the same under all circumstances. That is incorrect. The general rule of the equal protection clause is that *similarly situated* individuals should be treated alike. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). In the prison context, officials may treat prisoners differently if there is a rational basis for doing so. May v. Sheahan, 226 F.3d 876, 882 (7th Cir. 2000). In this case, plaintiff does not allege that he was placed in segregation without reason. Rather, his claim seems to be that, once he was released from segregation, he should have had the same privileges as other prisoners. Because I cannot say that it would be irrational to conclude that penological interests would be better served by "transitioning" a prisoner back into general population, plaintiff's claim under the equal protection clause fails.

ORDER

IT IS ORDERED that

1. This case is DISMISSED for plaintiff Dawon Jones's failure to state a claim upon which relief may be granted.

2. A strike will be assessed in accordance with 28 U.S.C. § 1915(g).

3. Although plaintiff's case was dismissed, he is still obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The

clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 23d day of December, 2010.

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