

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

JACKIE CARTER,

Plaintiff,

v.

OPINION AND ORDER

10-cv-510-wmc

DYLAN RADTKE, GREGORY GRAMS,
JANEL NICKEL, RICK RAEMISCH,
JOANNE LANE, MARY LIESER,
DALIA SULIENE, LORI ALSUM,
ALICE ROGERS and THOMAS MALONEY,

Defendants.

In this action, plaintiff Jackie Carter is suing prison administrators, correctional officers, medical staff and complaint examiners for violating his rights by falsifying conduct reports against him, retaliating against him, blocking legal mail and various other actions. He has also filed two motions to appoint counsel and a motion for preliminary injunctive relief.

This case is pending before the court for screening pursuant to 28 U.S.C. § 1915A. Under this statute, the court must dismiss the complaint if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune. *Id.*

For reasons set forth briefly below, the court concludes that Carter may proceed on his claims that (1) he is being retaliated against by being given false conduct reports and (2) his outgoing mail is being blocked. He will not be allowed to proceed on the remainder of his claims. The court will also deny his motions for appointment of counsel

and for preliminary injunctive relief.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court reads the allegations generously and under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Carter alleges, and the court assumes for purposes of this screening order, the following facts.

- Problems at the prison include "racism, torture, nepotism, physical abuse, denial of medical care, hate crimes, selective hiring and much more."
- This misconduct cannot be exposed because prison staff, all of whom are either related to each other or close friends, cover up the mistreatment.
- Carter's mail detailing the misconduct is being "opened up, resealed and tossed back in [his] cell" by defendants Alice Rogers and Dylan Radtke.
- Defendant Thomas Maloney refuses to photocopy Carter's legal documents.
- Defendants Radtke, Gregory Grams, Janel Nickel and Mary Lieser conspired to give Carter false conduct reports for writing to "legal reps" in attempt to expose the abuse. As a result, Carter was placed in solitary confinement for at least 368 days.
- Carter was "flipped out" of a wheelchair, giving him a concussion.
- Carter was prescribed a "double dose" of medication that was known to cause him sickness.
- Bright lights were left on and his toilet was flushed continuously overnight, depriving him of sleep.
- The shower in Carter's cell was turned on while his legal documents were underneath.
- Photographs of Carter's family were mutilated or destroyed and racial slurs were written on his possessions.

- He has not been given soap and cannot clean his open sores.
- Staff is “beating non-white men, mostly black, electrocuting them, spraying us with chemical incapacitating skin peeling agents, chaining us to steel gates while cutting off every stitch of our clothing.” A female correctional officer recorded the prisoners being chained to the gate.
- Defendant complaint examiners Joanne Lane and Mary Lieser refuse to process his grievances.
- Carter sent letters to defendant Secretary Rick Raemisch but he did nothing.

OPINION

I. False Conduct Reports

The court understands Carter to be raising due process and retaliation claims against defendants Radtke, Grams, Nickel and Lieser for issuing him false conduct reports. The Fourteenth Amendment prohibits states from depriving “any person of life, liberty or property without due process of law.” U.S. Const. Amend. XIV. To state a claim for procedural due process, a plaintiff must allege inadequate procedures and an interference with a liberty or property interest. *Kentucky Dept. of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). An inmate facing disciplinary charges has a right to due process that includes an impartial decision maker. *Wolff v. McDonnell*, 418 U.S. 539, 571 (1974); *Pannell v. McBride*, 306 F.3d 499, 502 (7th Cir.2002).

The sole allegation that false conduct reports were filed against Carter does not support a due process claim. In *Lagerstrom v. Kingston*, 463 F. 3d 621, 623 (7th Cir. 2006), the court of appeals upheld the dismissal of a prisoner’s due process claim at screening, although he alleged that the reporting officer had falsified the conduct report

and the hearing officer had not allowed him to review statements from anonymous informants. The court found that the false charges and fabricated evidence did not undermine the quality of the procedures offered. *Id.* at 623-25 (citing *McPherson v. McBride*, 188 F.3d 784, 787 (7th Cir. 1999) (“[W]e have long held that as long as procedural protections are constitutionally adequate, we will not overturn a disciplinary decision solely because evidence indicates the claim was fraudulent.”). Accordingly, Carter will not be allowed to proceed on this claim.

Carter’s allegations fare better concerning his First Amendment retaliation claim. Carter alleges that defendants Radtke, Grams, Nickel and Lieser issued him false conduct reports in response to his attempts to tell the outside world generally (and courts in particular) about mistreatment occurring in Wisconsin prisons. To state a claim for retaliation, a plaintiff must identify (1) the constitutionally protected activity in which he was engaged; (2) one or more retaliatory actions taken by each defendant that would deter a person of “ordinary firmness” from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that the plaintiff’s protected activity was one of the reasons defendants took the action they did against him. *Bridges v. Gilbert*, 557 F.3d 541, 556 (7th Cir. 2009).

Although Carter’s allegations contain limited detail, the court concludes for screening purposes that he has stated a retaliation claim against these defendants because reporting misconduct is a “protected activity.” *See, e.g., DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000) (“a prison official may not retaliate against a prisoner because that prisoner filed a grievance”). At summary judgment or trial, however, Carter will have to

present proof showing that *each* defendant was personally responsible for a false conduct report and that these defendants held a retaliatory motive. Bare assertions that defendants “conspired” against him will not be enough to show personal involvement at summary judgment or trial. *See Cooney v. Rossiter*, 583 F.3d 967, 970-71 (7th Cir. 2009). (“conspiracy allegations [are] often held to a higher standard than other allegations; mere suspicion that persons adverse to the plaintiff had joined a conspiracy against him or her [is] not enough.”)

II. Mail

Carter also alleges that defendants Rogers and Radtke have been blocking mail that Carter tries to send both to court and others in the outside world regarding his mistreatment and that defendant Thomas Maloney refuses to photocopy Carter’s legal documents. The court understands Carter to be bringing access to the courts and First Amendment claims regarding his mail.

While prisoners have a well-recognized constitutional right of access to the courts to challenge the conditions of their confinement, *Lehn v. Holmes*, 364 F.3d 862, 865-66 (7th Cir. 2004), the prisoner must allege facts from which an inference can be drawn of “actual injury.” *Lewis v. Casey*, 518 U.S. 343, 349 (1996). This rule is derived from the doctrine of standing and requires the prisoner to demonstrate that a non-frivolous legal claim has been frustrated or impeded. *Id.* In other words, the prisoner must plead at least general factual allegations suggesting he “has suffered an injury over and above the denial.” *Walters v. Edgar*, 163 F.3d 430, 434 (7th Cir. 1998). At a minimum, he must

allege facts showing that the “blockage prevented him from litigating a nonfrivolous case.” *Id.*; see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (plaintiff may sustain burden of establishing standing through factual allegations of complaint).

In his complaint, Carter does not indicate what court documents have been held or point to any lawsuit that has been frustrated by defendants’ actions. As this court has noted before, Carter has filed numerous other lawsuits in the past three years and seemingly has no problem submitting documents for those cases. Accordingly, he will not be allowed to proceed on an access to the courts claim.

Carter will, however, be allowed to proceed on his First Amendment claim. Prisoners have protected First Amendment interests in both sending and receiving mail. *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999). Restrictions on an inmate's First Amendment rights are valid only if reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Lindell v. Frank*, 377 F.3d 655, 657 (7th Cir. 2004). Legitimate penological objectives include deterrence of crime, rehabilitation and preservation of internal security. *Pell v. Procunier*, 417 U.S. 817, 822-23 (1974). In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether there is a “valid, rational connection” between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain; what impact an accommodation of the right will have on prison administration; and whether there are other ways that “prison officials can achieve the same goals without encroaching on the right.” *Turner*, 482 U.S. at 89. Because an assessment under the *Turner* factors requires a district court to evaluate the prison

officials' reasons for the restriction, the Seventh Circuit has suggested that in most cases, district courts should wait until summary judgment to determine whether there is a reasonable relationship between a restriction and a legitimate penological interest. *E.g.*, *Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009); *Lindell*, 377 F.3d at 658. Accordingly, Carter will be allowed to proceed on a First Amendment claim against defendants Rogers and Radtke for blocking his outgoing mail.

III. Supervisors/Complaint Examiners

Carter brings claims against defendant complaint examiners Lane and Lieser for refusing to process his grievances and against defendant Secretary Raemisch for doing nothing after Carter complained to him. At this point in the proceedings, Carter's allegations are sufficient to state claims against these defendants. As the case proceeds, however, he will also have to show that each defendant had a responsibility to respond to his complaints, yet failed to help him. *See Burks v. Raemisch*, 555 F.3d 592, 596 (7th Cir. 2009) (rejecting "contention that any public employee who knows (or should know) about a wrong must do something to fix it").

IV. Other Claims/Defendants

Carter raises several other claims on which he will not be allowed to proceed. For instance, Carter discusses various problems at the prison such as "racism, torture, nepotism, physical abuse, denial of medical care, hate crimes, selective hiring and much more," and claims that prison officials cover up the problems to protect family and friends. He points out a particular instance of a female correctional officer recording

beatings of chained prisoners, although he does not explain whether he was a victim of this incident. He also alleges to have been “flipped out” of a wheelchair; prescribed a “double dose” of medication that was known to cause him sickness; not being given soap and harassed by sleep deprivation tactics; water being poured on his legal documents and pictures of his family being destroyed. However, he does not explain which defendants took each action.

Under Fed. R. Civ. P. 8, Carter’s complaint is required to contain “a short and plain statement” of each claim showing that he is entitled to relief. “The primary purpose of [Rule 8] is to give defendants fair notice of the claims against them and the grounds supporting the claims.” *Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011) (citations omitted). Carter’s allegations do not do so. Some of his allegations are extremely vague and it is not clear whether he was actually a victim of the abuse. For all of these claims, he does not state what defendants were personally involved in the violations. Therefore these claims will be dismissed without prejudice. Carter is, however, free to amend his complaint in order to provide more detail about the specifics of his claim.

Finally, Carter raises allegations regarding the denial of medically authorized shoes and mattress as well as meals, the reduction of his pain medication and being forced to stand on his swollen, painful feet. Those claims have been or are being litigated in case nos. 09-cv-437-wmc and 10-cv-280-wmc and will not be repeated in this case.

V. Motions for Appointment of Counsel

Carter has filed two motions for appointment of counsel. As discussed in Carter's previous cases in this court, however, he was already appointed counsel for the purpose of consulting with him about similar claims raised in several of his pending cases, as well as ably represented himself at a hearing about his various claims. Ultimately, the court concluded that it was appropriate for Carter to proceed *pro se* in those lawsuits. *See, e.g., Carter v. Radtke*, Case No. 09-cv-437-wmc, slip op. (Dec. 2, 2011). For the same reasons, the court will deny his motions for appointment of counsel here.

VI. Initial Partial Payment

Because Carter has not submitted the \$350 filing fee for this case, the court construes his complaint as including a request for leave to proceed *in forma pauperis*. From the trust fund account statements previously submitted to this court, Carter's initial partial payment has been calculated to be \$11.30. If Carter does not have the money to make the initial partial payment from his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that Carter is free to ask prison authorities to pay all of his filing fees from his release account. The only amount Carter must pay at this time is the \$11.30 initial partial payment. Before prison officials take any portion of that amount from Carter's release account, they may first take from Carter's regular account up to the full amount owed. Carter should show a copy of this order to prison officials to insure that they are aware his initial partial payment should be sent to this court. If Carter fails

to submit the initial partial payment by the deadline set by June 16, 2013, the clerk of court will be directed to close this case without prejudice to Carter refiling his case at a later date.

VII. Motion for Preliminary Injunctive Relief

Carter has filed a motion for preliminary injunctive relief, but his motion is really a restatement of the claims on which he will not be allowed to proceed; he does not appear to seek injunctive relief regarding the false conduct report and mail claims on which he is proceeding. Accordingly, the motion will be dismissed without prejudice. Carter is free to file a new motion injunctive relief but it will have to be limited to the claims that are the subject of this lawsuit going forward.

VIII. Status Conference

Pursuant to the June 6, 2013 order entered in each of Carter's remaining cases (dkt. #29), this case has been consolidated with case no. 10-cv-520-wmc and will be set for a preliminary pretrial conference.

ORDER

IT IS ORDERED that:

(1) Plaintiff Jackie Carter is GRANTED leave to proceed on the following claims:

- (a) defendants Radtke, Grams, Nickel and Lieser retaliated against him by issuing him false conduct reports in response to his attempts to communicate with the outside world about mistreatment at Wisconsin prisons, defendant Raemisch has done nothing after plaintiff alerted

him to the problem and defendants Lane and Lieser would not process his grievances.

- (b) First Amendment claims against defendants Rogers and Radtke for blocking his outgoing mail, defendant Raemisch for doing nothing after plaintiff alerted him to the problem and defendants Lane and Lieser for failing to process his grievances.

(2) Plaintiff is DENIED leave to proceed on the following claims:

- (a) defendants Radtke, Grams, Nickel and Lieser violated plaintiff's due process rights by issuing him false conduct reports.
- (b) access to the courts claims against defendants Rogers and Radtke for blocking his legal mail, and against defendant Maloney for failing to make copies of legal materials.
- (c) The remainder of Carter's claims, which fail to comply with Fed. R. Civ. P. 8.

(3) Defendants Dalia Suliene, Lori Alsum and Thomas Maloney are DISMISSED from this case.

(4) Plaintiff's motions for appointment of counsel (dkt. #21, 27) are DENIED.

(5) A telephonic scheduling conference will be held on June 27, 2013 at 10 a.m. before Judge Conley. Defendant shall initiate the call to the court.

(6) Plaintiff is assessed \$11.30 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$11.30 on or before June 16, 2013.

(7) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's supplemental complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

(8) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff

unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

(9) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 7th day of June, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge