

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

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JEFFREY STEVEN AKRIGHT,

Plaintiff,

v.

RANDALL HEPP, CAPTAIN FOSTER  
and C.O. ISENSEE,

Defendants.

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ORDER

11-cv-357-bbc

In this proposed civil action, plaintiff Jeffrey Akright, a prisoner at the Jackson Correctional Institution, contends that defendants are violating his constitutional rights by prohibiting him from receiving legal assistance from prisoners not located in his housing unit. Plaintiff has made an initial partial payment in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is a prisoner, I must screen his complaint to determine whether it is legally frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2) and 1915A. Having reviewed plaintiff's complaint, I conclude that it states a claim upon which relief may be granted under the First Amendment.

Plaintiff's allegations are easily summarized. He says that the Jackson prison handbook includes a rule that prohibits prisoners from possessing legal documents prepared by another prisoner unless the two prisoners live in the same housing unit. Defendant Isensee, a correctional officer, gave plaintiff a conduct report for violating this rule when Isensee found affidavits prepared by other prisoners in plaintiff's cell. Plaintiff was using these affidavits for litigation. After a hearing, defendant Foster, a captain, found plaintiff guilty of violating the rule. Defendant Hepp, the warden, affirmed the decision.

Prisoners have a right under the First Amendment's free speech clause to communicate with others, including other prisoners. The question in each case is whether a restriction on that right is reasonably related to a legitimate penological interest. Turner v. Safely, 482 U.S. 78, 89 (1987). The same standard applies to communication between prisoners related to legal matters. Shaw v. Murphy, 532 U.S. 223, 228 (2001).

In applying this standard, 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 to the prisoner; what impact 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 Turner requires an evaluation of the prison officials' reason for the restriction, the Court of Appeals for the Seventh Circuit has

suggested that district courts should wait until summary judgment to determine whether there is a reasonable relationship between a restriction and legitimate penological interest. E.g., Ortiz v. Downey, 561 F. 3d 664, 669-70 (7th Cir. 2009) (holding that it was error for district court to conclude without evidentiary record that policy was reasonably related to legitimate interest); Lindell v. Frank, 377 F.3d 655, 658 (7th Cir. 2004) (same).

Under this standard, plaintiff has stated a claim upon which relief may be granted against defendants. Accordingly, I will allow plaintiff to proceed on this claim.

#### ORDER

IT IS ORDERED that

1. Plaintiff Jeffrey Akright is GRANTED leave to proceed on his claim that defendants Isensee, Foster and Hepp punished him for communicating with other prisoners, in violation of the First Amendment.

2. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use

a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's 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 defendants.

5. Plaintiff is 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 18th day of July, 2011.

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