IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PRINCE ATUM-RA UHURU MUTAWAKKIL,
also known as NORMAN GREEN,

OPINION AND ORDER

Plaintiff,

11-cv-471-slc[1]

v.

PETER HUIBREGTSE, JUDITH HUIBREGTSE,
LEBBEUS BROWN, CHAD LOMEN,
ELLEN RAY, KELLY TRUMM,
CHRISTINE BEERKIRCHER, BRIAN KOOL,
TRACEY GERBER, CRAIG TOM,
DIANE ALDERSON, MELANIE HARPER,
GARY HAMBLIN and JOHN AND JANE DOES 1-10,

Defendants.[2]

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Plaintiff Prince Atum-Ra Uhuru Mutawakkil, a prisoner at the Wisconsin Secure Program Facility, has filed a proposed pro se complaint in which he contends that defendants have violated his rights in various ways. Defendants removed the action from state court in accordance with 28 U.S.C. §§ 1441 and 1446; they have paid the filing fee in full. Because

[1] I am exercising jurisdiction over this case for the purpose of this order.

[2] I have amended the caption to reflect the full names of the defendants as identified in their notice of removal.

plaintiff is a prisoner, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A. Having reviewed the complaint, I conclude that plaintiff may proceed on his claim that several defendants are prohibiting him from using his religious name, in violation of his rights under the free speech clause, the equal protection clause, the free exercise clause and the Religious Land Use and Institutionalized Persons Act. However, his complaint must be dismissed with respect to all other federal claims. The parties will be directed to show cause why plaintiff's claims under the Wisconsin Constitution should not be remanded to state court.

OPINION

A. Name Change

Plaintiff's primary claim is that defendants Peter Huibregtse (the warden), Judith Huibregtse (a mailroom sergeant), Lebbeus Brown (a lieutenant), Brian Kool (position not disclosed), Chad Lomen (an officer in the mailroom), Ellen Ray (an inmate complaint examiner) and Diane Alderson (a records custodian) are prohibiting him from identifying himself as Prince Utum-Ra Uhuru Mutawakkil, which he says is his "common law spiritual name." (His birth name is Norman Green.) In particular, plaintiff says these defendants will not process mail he receives or sends out using his religious name because they believe that "African and African-American spiritual beliefs, cultures and heritages" are related to gangs

and "terrorism." Cpt. ¶ 15, dkt. #2-3. He says he chose the new name as part of his "spiritual growth and development. To plaintiff, it is . . . equivalent to a new birth, resurrection or baptism." Id. at ¶ 4.

Plaintiff has a qualified right under the free speech clause to choose his own name, Koutnik v. Berge, No. 03-C-345-C, 2004 WL 1629548, *6 (W.D. Wis. 2004), as well as under the free exercise clause and the Religious Land Use and Institutionalized Persons Act, at least if he can show that the inability to use his religious name substantially burdens his religious exercise. Salaam v. Lockhart, 905 F.2d 1168, 1170 (8th Cir. 1990); Azeez v. Fairman, 795 F.2d 1296 (7th Cir.1986). In addition, plaintiff has a right to be free from race discrimination. Johnson v. California, 543 U.S. 499 (2003).

With respect to plaintiff's free speech claim, the primary question is whether the restriction is reasonably related to a legitimate penological interest. Turner v. Safley, 482 U.S. 78 (1987). 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 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. Id. at 89.

Plaintiff's free exercise claim may raise the additional question whether the restriction

is applied neutrally among different religions. Employment Division, Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990); Borzych v. Frank, 439 F.3d 388, 390 (7th Cir. 2006) With respect to his RLUIPA claim, once a plaintiff shows that defendants substantially burdened his sincerely held beliefs, the burden shifts to defendants to show that their actions further "a compelling governmental interest," and do so by "the least restrictive means." Cutter v. Wilkinson, 544 U.S. 709, 712 (2005). To prevail on a discrimination claim, a plaintiff must show that each defendant treated him less favorably because of his race and not for a legitimate reason. May v. Sheahan, 226 F.3d 876, 882 (7th Cir. 2000).

For the purpose of satisfying federal pleading standards, plaintiff has alleged enough to show that it places a substantial burden on his religious exercise to be prohibited from using his religious name and that defendants are not applying a neutral rule. However, at summary judgment or trial, plaintiff will have to come forward with specific evidence proving these elements of his claims.

In other cases, courts have upheld requirements on prisoners to follow statutory procedures for name changes, Azeez, 795 F.2d at 1299, or stated that it is reasonable to require the prisoner to include on his correspondence both his religious name and the name under which he was incarcerated. Malik v. Brown, 71 F.3d 724 (9th Cir. 1995); Salaam, 905 F.2d at 1174. Thus, if plaintiff has not followed proper procedure for changing his name or he has refused to use both names on his correspondence, he will have an uphill

battle in prevailing on his claims. Plaintiff says that the circuit court has amended his judgment of conviction to identify him by his religious name, but he does not say whether this satisfies the requirements of the Department of Corrections. He does not say whether his mail lists both names or only his religious name. Resolution of these questions will have to wait for summary judgment or trial. 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).

Plaintiff raises four other claims that are related to the name change issue: (1) defendants Peter Huibregtse and Brown testified falsely to a state court that plaintiff's religious name is gang-related; (2) defendant Jane Doe refused to process plaintiff's transcript fees in Milwaukee County case because plaintiff wanted to use his release account to pay for it (plaintiff says he wanted to use the transcript to show that defendant Huibregtse gave false testimony); (3) defendant Melanie Harper (plaintiff's social worker) refused to help plaintiff get a Social Security card with his religious name on it; and (4) a number of "mix-ups" have occurred in which prison officials have confused plaintiff with another prisoner named Martin Green. Plaintiff cannot proceed on any of these claims.

With respect to the claim regarding alleged false testimony, if plaintiff can prove that defendants gave false testimony to the state court, this might help him prove that defendants

do not have a legitimate interest in prohibiting him from using his religious name, but it does not give rise to a separate claim, particularly because plaintiff alleges that the court sided with him and allowed him to amend his judgment of conviction, in spite of defendants' testimony. In any event, witnesses cannot be sued in a civil suit for their testimony. Briscoe v. LaHue, 460 U.S. 325 (1983).

With respect to his claim regarding the transcript fee, plaintiff does not have a constitutional right to use his release account for that purpose. The use of release account funds is governed by state law. Wis. Admin. Code § DOC 309.466. According to § 309.466(2), "[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation." In rare instances, the supremacy clause of the United States Constitution requires state law to give way to a competing federal law, but I am aware of no federal law that would require state officials to give prisoners money from their release account so that they can pay the cost of transcript under the circumstances alleged by plaintiff.

With respect to plaintiff's claim against his social worker, I am not aware of any law that would subject her to a civil lawsuit for failing to assist plaintiff with the Social Security Administration. If prison officials were requiring plaintiff to get a new Social Security card as a condition of recognizing his name, their refusal to help him might undermine an

argument that defendants believed it was important for plaintiff to complete this step. Again, however, it does not give rise to a separate claim.

With respect to the confusion surrounding plaintiff and Martin Green, plaintiff alleges that: (1) he has received confidential correspondence that was addressed to the other prisoner; (2) he was called for a blood pressure screening when it should have been the other prisoner; (3) he was told not to eat or drink in preparation for a blood draw that was scheduled for the other prisoner; and (4) his blood pressure medication was allowed to expire. None of these allegations rise to the level of a violation of the Constitution or even state law. The only allegation that comes anywhere close is the mistaken expiration of his medication, but plaintiff alleges that the mix-up was corrected after he explained it to the doctor and he does not allege that he suffered any adverse health consequences.

B. Grievance Procedures

Plaintiff devotes much of his complaint to various allegations about the inadequacy of the prison grievance system. Generally, he says that it does not provide a real remedy for prisoners, but is only a "rubber stamp" for the wrong doing of prison officials.

These allegations do not state a claim under the Constitution. Prison officials may not prevent a prisoner from filing grievances or retaliate against him for filing one, DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000), but they are under no constitutional obligation

to provide an effective grievance system or, for that matter, any grievance system at all. Owens v. Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) ("Prison grievance procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged mishandling of Owens's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim."); see also Grieveson v. Anderson, 538 F.3d 763, 772-73 (7th Cir. 2008); Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996). If a prison official fails to give individualized consideration to a grievance, this certainly runs counter to the problem-solving purpose of a grievance system, but it does not prevent or hinder a prisoner from filing a lawsuit, as is demonstrated by plaintiff's bringing of this case.

C. Opened Mail

Next, plaintiff alleges that an unnamed prison official intentionally opened a letter from the Federal Bureau of Investigation outside plaintiff's presence and that defendant Trumm denied his grievance when he complained about it. In some circumstances, a prisoner may have the right to be present when prison officials open his mail. Guajardo-Palma v. Martinson, 622 F.3d 801 (7th Cir. 2010). However, this right does not attach to every letter or even to all letters that come from a government agency. Id. at 804. Rather, the prisoner must show that the letter included private information related to a case

the prisoner is litigating. Id. at 806. Even then, plaintiff must point to a policy or practice of opening such mail. Id. Plaintiff does not allege that the letter included private information about a case or that defendants had a practice of opening his legal mail. Accordingly, the complaint must be dismissed as to this claim.

D. Legal Documents

Plaintiff alleges that defendant Brown and "others" confiscated his legal documents related to his case and that defendant Craig Tom (a lieutenant) later "ordered the destruction" of these documents. I understand plaintiff to be bringing a claim for denial of his right to have access to the courts, but his claim is premature. Plaintiff does not identify with any specificity what these documents are or why he believes he needed them. More important, he does not identify any particular way in which the loss of these documents is hindering his ability to litigate this case. For example, he does not suggest that he was forced to forfeit a claim because these documents are missing. Without allegations showing how he is being hindered from litigating this suit, his claim must be dismissed. Christopher v. Harbury, 536 U.S. 403, 414-15 (2002).

E. DAI 309.20.03

Plaintiff says he is challenging the constitutionality of "DAI 309.20.03." However,

he fails to explain how this policy is being applied to him violate his rights. Accordingly, I am dismissing this claim as well.

F. Other Federal and International Legal Theories

Plaintiff uses the term "RICO conspiracy" throughout his complaint, but I am not allowing him to proceed under that theory because he does not identify any "racketeering activity" by defendants or include allegations supporting any of the other elements for a claim under the Racketeer Influenced and Corrupt Organizations Act. Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496 (1985) (claim under RICO requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity). He also cites the Universal Declaration of Human Rights, but that document does not create rights that are enforceable in American courts. Sosa v. Alvarez–Machain, 542 U.S. 692, 734–35 (2004) (Universal Declaration of Human Rights "does not of its own force impose obligations as a matter of international law").

G. Claims under the Wisconsin Constitution

Plaintiff cites the Wisconsin Constitution in support of many of his claims. However, the state constitution does not authorize suits for money damages except in the context of a takings claim. W.H. Pugh Coal Co. v. State, 157 Wis. 2d 620, 634-35, 460 N.W.2d 787,

792-93 (1990) (holding that plaintiff could sue state for money damages arising from unconstitutional taking of property because article I, section 13 of the Wisconsin Constitution requires that state provide "just compensation" when property is taken); Jackson v. Gerl, 2008 WL 753919, *6 (W.D. Wis. 2008) ("Other than one very limited exception inapplicable to this case, I am not aware of any state law provision that allows an individual to sue state officials for money damages arising from a violation of the Wisconsin Constitution.") With respect to injunctive relief, sovereign immunity principles prohibit federal courts from enjoining state officials under state law. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984). This limitation applies not just to injunctions, but to declaratory relief as well. Benning v. Board of Regents of Regency Universities, 928 F.2d 775, 778 (7th Cir. 1991).

These limitations seem to leave plaintiff with no remedy in this court under the Wisconsin Constitution. Accordingly, I am directing the parties to show cause why plaintiff's state law claims should not be remanded to state court.

H. Motions

While this case was pending in state court, plaintiff filed a motion for a preliminary injunction. Dkt. #2-5. In addition, plaintiff included a request for appointment of counsel at the end of his complaint. Cpt. ¶ 133, dkt. #2-3. Both motions will be denied without

prejudice.

Before a plaintiff can receive preliminary injunctive relief in this court, he must comply with the Procedure To Be Followed On Motions For Injunctive Relief, a copy of which I am including with this order. In particular, plaintiff must file with the court proposed findings of fact supporting his claim and submit with his proposed findings of fact any evidence he has to support his request. In addition, he must show that he meets the standard for obtaining preliminary injunctive relief. River of Life Kingdom Ministries v. Village of Hazel Crest, 585 F.3d 364, 369 (7th Cir. 2009) ("A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. To obtain such relief, the moving party must first demonstrate that it has a reasonable likelihood of success on the merits, lacks an adequate remedy at law, and will suffer irreparable harm.").

With respect to plaintiff's motion for appointment of counsel, the Court of Appeals for the Seventh Circuit has held that before a district court can consider such motions, it must first find that the petitioner made reasonable efforts to find a lawyer on his own and was unsuccessful or was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers who he asked to represent him in this case and who turned him down. Because plaintiff has not

complied with that requirement, his motion will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff Prince Atum-Ra Uhuru Mutawakkil, also known as Norman Green, is GRANTED leave to proceed on his claim that that defendants Peter Huibregtse, Judith Huibregtse, Lebbeus Brown, Brian Kool, Chad Lomen, Ellen Ray and Diane Alderson are prohibiting him from identifying himself using his religious name, in violation of his rights under the free speech clause, the equal protection clause, the free exercise clause and the Religious Land Use and Institutionalized Persons Act.

2. Plaintiff is DENIED leave to proceed on all other claims. The complaint is DISMISSED as to defendants Gary Hamblin, Melanie Harper, Craig Tom, Tracy Gerber, Christine Beerkircher, Kelly Trumm and John and Jane Does 1-10.

3. Plaintiff's motion for a preliminary injunction and motion for appointment of counsel are DENIED.

4. 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.

5. Pursuant to an informal service agreement between the Department of Justice and this court, the Department has agreed to accept electronic service of documents on behalf of the

defendants it represents. Therefore, for the remainder of this lawsuit, plaintiff does not have to send a paper copy of each document he files with the court to the Department. All he has to do is submit the document to the court, and the Department will access the document through the court's electronic filing system. Discovery requests or responses are an exception to the electronic service rule. Usually, those documents should be sent directly to counsel for the opposing party and do not have to be sent to the court. Discovery procedures will be explained more fully at the preliminary pretrial conference.

6. The parties may have until August 25, 2011, to show cause why plaintiff's state law claims should not be remanded to state court for lack of jurisdiction. If the parties fail to respond by that date, I will remand those claims.

Entered this 11th day of August, 2011.

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