

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

SCOTT R. SCHMIDT,

Plaintiff,

v.

DEBRA McCULLOUGH, ROBERT KNEEPKINS,
BRIAN FAUST, JEFF HRUDKA, JOHN DOE 1 and
JOHN DOE 2,

Defendants.

ORDER

12-cv-192-slc¹

Plaintiff Scott Schmidt has filed a proposed complaint under 42 U.S.C. § 1983, contending that several employees at the Sand Ridge Secure Treatment Center violated his rights under the United States Constitution, federal statute and state law by failing to send his legal mail in a timely manner. He has also filed a motion for a preliminary injunction and a motion for appointment of counsel. He is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is proceeding under the in forma pauperis statute, I must screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). After reviewing plaintiff's

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

complaint, I conclude that his allegations do not state a claim under the United States Constitution or federal statute. Therefore, I will dismiss plaintiff's constitutional and federal law claims. Additionally, I will decline to exercise jurisdiction over plaintiff's state law claims and will dismiss those claims without prejudice. Plaintiff may file his state law claims in state court. Because I am dismissing all of plaintiff's claims, I will deny his motion for appointment of counsel and his motion for a preliminary injunction as moot.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Scott Schmidt is a patient committed under Wisconsin chapter 980 and housed at the Sand Ridge Secure Treatment Center, located in Mauston, Wisconsin. Defendants are employed at Sand Ridge. Debra McCullough is the facility director; Robert Kneepkins is the deputy director; Brian Faust is the mailroom sergeant; Jeff Hrudka is a unit manager; and John Does 1 and 2 are mailroom employees.

On January 20, 2012, plaintiff placed three separate envelopes in the unit mailbox with separate money disbursements for each that were marked "legal mail." Two of the envelopes contained a legal brief that was due on January 31, 2012 in plaintiff's case number 09CV004979, pending in the Circuit Court for Dane County. The envelopes were addressed to a state court judge and an assistant attorney general. The third envelope was addressed to the attorney general and contained a notice of claim pertaining to plaintiff's conditions of confinement at Sand Ridge. The deadline for the notice of claim was January

24, 2012.

On January 25, 2012, plaintiff asked unit staff to confirm that his legal mail had been sent. Staff informed plaintiff that his mail had not been sent because he had insufficient funds in his patient account. Plaintiff contacted a psychiatric care supervisor who told plaintiff that if he requested an “unpaid obligation” from defendant Hrudka, his legal mail would be sent. Plaintiff filled out a patient request on the evening of January 25 and sent it to Hrudka, along with an enveloped marked “legal mail” addressed to the attorney general. Plaintiff’s request stated

I have legal mail that the mailroom refuses to send out because of indigency. The mailroom has 2 envelopes (legal briefs) and 1 certified mail letter to mail out. Another envelope I am including here (Notice of Claim & Injury). The total cost is \$5 or \$6 and all items have a court imposed or Wis. Statute deadline. Two envelopes go to the Attorney General—J.B. Van Hollen, one to Honorable Shelley J. Gaylord and one to Ass’t Attorney General Karla Keckhaver. All items (legal mail) need to be mailed at once, therefore I am requesting an unpaid obligation approval. And on 01-31-2012 I will receive my \$15.00 paycheck.

On January 26, defendant Hrudka and a psychiatric care supervisor met with plaintiff. They told him that his unpaid obligation request was being denied because none of his four legal mail documents pertained to his confinement under chapter 980. Plaintiff told them that they were violating Sand Ridge’s policy regarding unpaid obligations, as well as violating state and federal law. He also told them that he would have money to pay back the cost of postage when he received his paycheck at the end of the month. Hrudka told plaintiff that he had talked with defendants McCullough and Kneepkins and they told Hrudka to deny plaintiff’s request. Hrudka returned plaintiff’s request for an unpaid

obligation to him, along with plaintiff's letter to the attorney general.

Plaintiff's other three letters were eventually mailed on February 14, 2012, after he had money in his patient account to pay for postage.

DISCUSSION

Plaintiff contends that defendants' refusal to send his legal mail violated his constitutional right of access to the courts, as well as his rights under the First, Fourth, Fifth, Eighth and Fourteenth Amendments of the United States Constitution and 18 U.S.C. § 1702. Additionally, he contends that defendants violated his rights under the Wisconsin constitution and several Wisconsin statutes and regulations.

A. Access to the Courts

The United States Constitution protects plaintiff's right to "meaningful access to the courts." Bounds v. Smith, 430 U.S. 817, 821-22 (1977). A claim for access to the courts may be forward-looking, for a lawsuit yet to be litigated, or backward-looking, for a lawsuit or a chance to sue that has already been lost. Christopher v. Harbury, 536 U.S. 403, 413-14 (2002). For backward-looking claims, a plaintiff must show that the defendants caused the plaintiff to lose a meritorious claim or a chance to sue on a meritorious claim. Id. at 414. To state a claim for backward-looking denial of access to the courts, a plaintiff must describe the underlying claim and explain how it has been lost or impeded. Id. at 415-16. See also Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006) (plaintiff bringing access to courts

claim must “make specific allegations as to the prejudice suffered because of the defendants’ alleged conduct”) (citation omitted).

In this case, plaintiff identifies three backward-looking access to the courts claims. First, he contends that defendants interfered with his ability to litigate his ongoing civil case in the Circuit Court for Dane County by refusing to mail his legal brief to the circuit court judge and assistant attorney general. Plaintiff alleges that defendants refused to grant plaintiff’s request for an unpaid obligation disbursement, despite knowing that his brief was subject to a court-imposed deadline.

The problem for plaintiff is that he fails to allege that defendants’ delay in mailing his legal brief caused him any prejudice. He does not allege that the circuit court rejected his untimely brief or that the delay had any affect on the outcome of that case. In fact, online court records maintained at the Wisconsin Circuit Court Access Program, <http://www.wcca.wicourts.gov>, for the case plaintiff identifies (Dane County Case No. 2009CV004979) show that the circuit court accepted and considered plaintiff’s late brief. Thus, plaintiff’s allegations fail to suggest that defendants’ delay in mailing his legal brief had any negative effect or any effect at all on his civil case.

Plaintiff asserts two additional claims for denial of his access to the courts relating to defendants’ delay in mailing plaintiff’s notice of claim letters to the state attorney general. However, plaintiff’s constitutional right of access to the courts does not protect his ability to file notices of claim regarding state law violations. The constitutional right of access to the court protects only certain types of litigation. Specifically, the right of access to the

courts protects plaintiff's ability to "present claimed violations of fundamental constitutional rights to the courts." Lewis v. Casey, 518 U.S. 343, 351, 355 (1996). This means that plaintiff's right of access to the courts protects direct and collateral challenges to his confinement or constitutional challenges to the conditions of his confinement. Bridges v. Gilbert, 557 F.3d 541, 553 (7th Cir. 2009) (citation omitted). Because plaintiff is not required to file a notice of claim with the attorney general before asserting constitutional claims, his right of access to the courts does not protect his ability to file notices of claims regarding state law violations. Therefore, plaintiff cannot state a claim for violation of his right of access to the courts on the basis of defendants' delay in mailing his notices to the state attorney general. Plaintiff's access to the courts claims will be dismissed.

B. Remaining Constitutional and Federal Law Claims

Plaintiff's remaining constitutional claims lack merit. With respect to his claims that defendants' delay in sending his legal mail violated his rights to equal protection and due process, plaintiff has not alleged that he was deprived of anything that would entitle him to receive due process, Sandin v. Conner, 515 U.S. 472, 483-84 (1995) (procedural due process required only when prisoner faces "atypical and significant hardship . . . in relation to ordinary incidents of prison life"), or that defendants treated plaintiff differently from others. Also, plaintiff's allegation that unnamed mailroom employees failed to notify him that his mail had been delayed does not state a constitutional claim. Although it is true that civilly committed persons such as plaintiff have a constitutional right to send and receive

mail, Thornburgh v. Abbott, 490 U.S. 401 407 (1989), the mailroom's delay in sending plaintiff's mail did not violate that right. The delay was temporary and was caused solely by plaintiff's inability to pay for postage.

Plaintiff does not state a claim for violation of the Eighth Amendment's prohibition on cruel and unusual punishment, because he does not allege that defendants disregarded any significant risk of serious harm to plaintiff. Farmer v. Brennan, 511 U.S. 825, 833 (1994) (to state Eighth Amendment claim, plaintiff must allege that (1) he faced "substantial risk of serious harm" and (2) officials identified acted with "deliberate indifference" to that risk).

Finally, plaintiff cannot bring a claim under 18 U.S.C. § 1702. This is a criminal statute and cannot be enforced by plaintiff.

C. State Law Claims

Because I am dismissing all of plaintiff's federal law claims, I will decline to exercise supplemental jurisdiction over his state law claims under 28 U.S.C. § 1367(c)(3). Redwood v. Dobson, 476 F.3d 462, 467 (7th Cir. 2007). I will dismiss those claims without prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Scott Schmidt is DENIED leave to proceed on his claims that defendants Debra McCullough, Robert Kneepkins, Brian Faust, Jeff Hrudka and John Does 1 and 2

violated his rights under the United States Constitution and federal law by failing to send his legal mail in a timely manner. These claims are DISMISSED for failure to state a claim on which relief may be granted.

2. The court declines to exercise jurisdiction over plaintiff's state law claims. These claims are DISMISSED without prejudice.

3. Plaintiff's motion for preliminary injunction, dkt. #3, and motion for appointment of counsel, dkt. #6, are DENIED as moot.

Entered this 4th day of June, 2012.

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