

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

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NATANAEL RIVERA,

Plaintiff,

v.

MICHEAL SCHULTZ, SAMUEL MINNING,  
LAWRENCE PETERSON and JOHN DOE I,

Defendants.  
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ORDER

12-cv-240-bbc

Plaintiff Natanael Rivera is proceeding in this case on his Eighth Amendment claim that defendants subjected him to a strip search to for the sole purpose of harassing and humiliating him. Now plaintiff has filed a motion for “restraining order and preliminary injunction” and a motion for appointment of counsel.

I note initially, that plaintiff’s motion for preliminary injunction does not comply with this court’s procedures for obtaining injunctive relief. Specifically, plaintiff has combined his motion, brief and proposed findings of fact in a single submission, instead of filing them as separate documents, as the procedures require. However, even if plaintiff had properly followed the court’s procedures, I would still have to deny his motion.

In his motion, plaintiff asks for a court order transferring him out of the Green Bay Correctional Institution and releasing him from segregation status. Plaintiff believes that if he continues to be housed at the Green Bay prison he may be subjected to additional

harassment and violations of his civil rights.

"[T]he granting of a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." Roland Machinery Co. v. Dresser Industries, 749 F.2d 380, 389 (7th Cir. 1984). A plaintiff asking for emergency or preliminary injunctive relief is required to show some likelihood of success on the merits on his underlying claim, that he has no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied and that the granting of an injunction is in the public interest. Ezell v. City of Chicago, 651 F.3d 684, 694 (7th Cir. 2011).

For preliminary relief to be granted, the irreparable harm must be likely, that is, there must be more than a "mere possibility" that the harm will come to pass. Michigan v. U.S. Army Corps of Engineers, 667 F.3d 765, 788 (7th Cir. 2011) (citing Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 21–23 (2008)). Although the alleged harm need not be occurring or be certain to occur before a court may grant relief, there still must be a "presently existing actual threat" of harm. Id. (citations omitted).

At the threshold, plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, then the court balances the relative harms and the public interest, considering all four factors on a "sliding scale." See In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

When dealing with prisoner cases, federal courts must accord wide-ranging deference to correctional professionals in the adoption and execution of policies for the operation of

penal institutions. Whitley v. Albers, 475 U.S. 312, 321–22 (1986) (quoting Bell v. Wolfish, 441 U.S. 520, 547 (1979)). Federal courts do not interfere with matters of prison management, such as determining the facility in which a particular prisoner is housed, without a showing that a particular situation violates the Constitution. Mendoza v. Miller, 779 F.2d 1287, 1292 (7th Cir. 1986).

At this point, plaintiff has failed to adduce evidence showing that he will suffer irreparable harm if he remains confined at the Green Bay Correctional Institution. The isolated strip search that is the subject of this case is not enough to show that plaintiff faces a particular risk of harm at present and he provides almost no detail about what is happening now other than stating in a conclusory fashion that he faces possible harassment in the future. As for plaintiff's assertion that he needs a transfer in order to be free from further retaliation, the "mere possibility" that harm may result is insufficient to establish a substantial risk of harm that would support a preliminary injunction. Lambert v. Buss, 498 F.3d 446, 452 (7th Cir. 2007). If plaintiff wants to raise a claim that prison officials are retaliating against him for filing this lawsuit, he will have to do so in a separate lawsuit after he exhausts his administrative remedies. His request for transfer to another institution must be denied.

I turn next to plaintiff's renewed motion for appointment of counsel. As plaintiff was told in the July 5, 2012 order denying his first motion for appointment of counsel, in deciding whether to appoint counsel, I must first find that plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented

from making such an effort. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has still failed to complete this first step.

This court would appoint counsel in virtually every prisoner lawsuit if enough lawyers were available to do so, but of the more than 200 new prisoner lawsuits filed in this court each year, the court appoints counsel in only a handful. This means that the court must determine in each case whether appointment of counsel is necessary and appropriate, Pruitt v. Mote, 503 F. 3d 657, 654, 656 (7th Cir. 2007), which requires determining from the record whether the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. Id. at 655.

At this very early stage of the proceedings, it is not possible to determine whether appointment of counsel is warranted in this case. Although plaintiff has filed additional materials supporting detailing his mental health concerns, nothing in the record suggests that he is incapable of gathering and presenting evidence to prove his claim. Going forward, the court will try to make litigating this case as easy for plaintiff as possible. The facts of this case are within plaintiff's personal knowledge and the law governing plaintiff's claims was explained to him in the July 5 order granting him leave to proceed. After the defendants have filed an answer the court will schedule a telephonic pretrial conference with Magistrate Judge Stephen Crocker. At the conference, plaintiff will be given the opportunity to ask the magistrate judge any questions he has about litigating his case. In addition, plaintiff will be instructed about how to use discovery techniques available to all litigants under the Federal Rules of Civil Procedure so that he can gather the evidence he needs to prove his case. He

will receive this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work. Plaintiff remains free to renew his motion for appointment of counsel if he encounters difficulties as the case moves forward, although I encourage him to contact outside counsel for help before renewing his motion.

Additionally, in asking this court to appoint counsel for him, plaintiff says that he is being denied a legal loan and that prison staff is hampering his ability to access the courts. Lack of supplies to conduct litigation is not a reason to appoint an attorney. Plaintiff appears to believe that because he is destitute or has overdrawn his legal loan account, he is entitled to appointed counsel who will bear the expense of his lawsuit. That is not the case. Plaintiff is in a position no different from that of a person who is not incarcerated and who has limited funds with which to file lawsuits in federal court. It would be improper to appoint counsel solely for the purpose of shifting plaintiff's costs to a lawyer. In any event plaintiff has not shown that his access to the courts genuinely has been compromised. Since the time he filed his motion to appoint counsel, he has filed two additional lawsuits in this court as well as his motion for preliminary injunction in this case. If plaintiff finds himself hindered in responding to defendants or to the court, he is free to file a motion regarding his access to the courts. In the event that files such a motion, plaintiff should be prepared to explain in detail why his ability to pursue this case has been hampered and what specific tasks he wishes to accomplish in this lawsuit that he cannot carry out because of his lack of resources. Plaintiff's ability to continue to correspond with the court indicates that he has

some resources available to him.

ORDER

IT IS ORDERED that plaintiff Natanael Rivera's motion for restraining order and preliminary injunction, dkt. #24, is DENIED.

Further, IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. #22, is DENIED without prejudice.

Entered this 20th day of August, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge