IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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QUEINTON LAVELL MATTHEWS, JR.,

OPINION AND ORDER

Plaintiff,

12-cv-247-slc[1]

v.

ANDREW NETZ, BYRON WIRTH,
SUSANNA PEARSON, MIKE CHRISTENSEN,
SHEENA LUBE, JAMES WURROW
and JOSEPH KEENA,

Defendants.

- -

Pro se plaintiff Queinton Lavell Matthews, Jr. has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that various officials at the Wood County jail retaliated against him for filing grievances and complaining about staff. Now that plaintiff has made an initial partial payment of the filing fee as required by 28 U.S.C. § 1915(b)(1), his complaint is ready for screening under 28 U.S.C. §§ 1915(e)(2) and 1915A.

Having reviewed the complaint, I conclude that plaintiff may proceed on his claim that defendant Andrew Netz placed him in administrative confinement and restricted his

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

privileges because he exercised his rights under the First Amendment. I am dismissing all other claims and defendants for plaintiff's failure to state a claim upon which relief may be granted.

In his complaint, plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

On December 7, 2011, plaintiff Queinton Lavell Matthews, Jr., filed a grievance against defendants Sheena Lube and James Wurrow (correctional officers at the jail) for refusing to give him his medication. Later, Lube gave plaintiff his dinner tray. When plaintiff asked her, "What [did] you do to this?" she said, "Everything." Plaintiff did not eat the meal.

A few days later, plaintiff asked to speak to a sergeant "about what was said." Defendant Andrew Netz (a lieutenant at the jail) came to speak to plaintiff, saying, "What the fuck is the problem? If I hear that you [are] giving my officers a problem, it's go[ing to] be trouble." In response, plaintiff filed a grievance against defendant Netz.

Netz came to speak to plaintiff again, this time with defendants Mike Christensen (a sergeant) and Byron Wirth (a correctional officer). When plaintiff asked Netz for the sheriff's address, Netz became angry, stating, "I don't wanna talk to you anymore. Next time you wanna talk to me, have your lawyer contact me."

After this incident, plaintiff "was placed on" administrative confinement. Netz told plaintiff that Netz "ran thing[s] around here" and he is "sick of [plaintiff's] grievance bullshit." Netz refused to allow plaintiff to use the law library, receive visits, call his lawyer or continue his GED class.

Defendants Christensen and Wirth told plaintiff that he would be able to receive visits and use the law library, but that was a lie.

Defendant James Wurrow (a correctional officer) "played with" plaintiff's mail. Defendant Susanna Pearson (a correctional officer) told plaintiff that she was not going to give him his mail and "has also refuse[d] to let [him] use the phone to call [his] lawyer."

OPINION

A. Scope of Plaintiff's Claims

I understand plaintiff to be raising claims that defendants retaliated against him in the following ways: (1) defendant Lube did something to his food on one occasion because plaintiff had filed a grievance against her; (2) defendant Netz placed him in administrative confinement and restricted his privileges for complaining about prison staff and asking for the sheriff's contact information (presumably so that plaintiff could complain to the sheriff about Netz); (3) defendants Christensen and Wirth lied to him about his privileges in administrative confinement; (4) defendant Wurrow "played with" plaintiff's mail; and (5)

defendant Pearson told plaintiff that she was not going to give him his mail and refused to let him use the telephone to call his lawyer.

I begin with two clarifications regarding the scope of plaintiff's claims. First, plaintiff lists Joseph Keena as a defendant, but he does not include any allegations related to that defendant in his complaint, so I am dismissing the complaint as to him. Second, plaintiff includes an allegation in his complaint that defendants Lube and Wurrow refused to give him his medication on one occasion, but I do not understand him to be raising a separate medical care claim. He says that his legal theory is "retaliation" and he cites the First Amendment. In any event, I could not allow plaintiff to proceed on a claim for inadequate medical care under the Eighth Amendment because he does not identify any harm he suffered as a result of not receiving medication on one occasion. Ortiz v. City of Chicago, 656 F.3d 523, 534-35 (7th Cir. 2011) (on claim for inadequate medical care, plaintiff must show that "defendants' failure to act was a source of harm for" plaintiff).

B. Retaliation

With respect to plaintiff's retaliation claims, it is well established that prisoners have a right under the First Amendment to complain about prison conditions and to file grievances, e.g., Watkins v. Kasper, 599 F.3d 791, 795-96 (7th Cir. 2010); Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007), and that prison officials may not retaliate

against a prisoner for engaging in those activities. Pearson v. Welborn, 471 F.3d 732, 738 (7th Cir. 2006). However, a person may bring a claim for retaliation only if the defendant's actions are serious enough to deter a reasonable person from exercising his rights in the future. Bridges v. Gilbert, 557 F.3d 541, 552 (7th Cir. 2009). To state a claim upon which relief may be granted, plaintiff must allege facts that are specific enough to give notice to each defendant and to raise a right to relief above the speculative level. McCauley v. City of Chicago, 671 F.3d 611, 616-17 (7th Cir. 2011). I will consider whether plaintiff's allegations meet this standard as to each defendant.

1. Sheena Lube

With respect to defendant Lube, plaintiff seems to believe that she somehow contaminated his food because she said, "Everything" when he asked her what she did to it. That allegation is not enough to state a claim under the Constitution. Plaintiff provides no reason to believe that Lube's comment was anything but sarcasm or that, if she had done something to his food, it would have endangered him in any way. In any event, plaintiff says that he did not eat the food, so he did not suffer any harm. Doe v. Welborn, 110 F.3d 520, 523 (7th Cir. 1997) (no claim under § 1983 if plaintiff is not injured).

2. Andrew Netz

With respect to defendant Netz, a potential problem is that plaintiff does not allege explicitly that Netz made the decision to put him in segregation. In cases brought under § 1983 such as this one, officials may be held liable for their own unconstitutional actions only; they may not be sued simply because they are the supervisor of someone else who may have violated the prisoner's rights. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). See also George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) ("Only persons who cause or participate in the violations are responsible. . . Ruling against a prisoner on an administrative complaint does not cause or contribute to the violation."). Thus, if Netz did not make the decision or approve it, he cannot be held liable.

However, "[a] document filed pro se is to be liberally construed and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citations and internal quotations omitted). At this stage of the proceedings, it is reasonable to infer that Netz was personally involved in the decision and that he was motivated by plaintiff's constitutionally protected conduct because plaintiff alleges that he was placed in administrative confinement soon after he asked Netz for the sheriff's contact information and that Netz said that he "ran thing[s] around here" and was "sick of [plaintiff's] grievance bullshit." Cf. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996) (reversing dismissal of

retaliation claim when plaintiff alleged that he was transferred after defendant told him "to stop filing all that shit").

At summary judgment or trial, plaintiff will have to prove that defendant Netz was responsible for his placement in administrative confinement *and* that one of the reasons for that decision was plaintiff's constitutionally protected conduct. A plaintiff may not prove his claim with the unsworn allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007). Plaintiff will have to come forward with *evidence* that defendant Netz put him in administrative confinement and restricted his privileges for exercising his constitutional rights.

For example, plaintiff may prove his claim with evidence that similarly situated prisoners not engaging in similar protected conduct were treated better than he was, cf. Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir.2006), or with any evidence suggesting a retaliatory motive, such as suspicious timing or statements by Netz suggesting that he was bothered by the protected conduct. E.g., Mullin v. Gettinger, 450 F.3d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-50 (7th Cir. 2005). If plaintiff was placed in segregation shortly after exercising his First Amendment rights, that is some evidence of a retaliatory motive, but in most cases the plaintiff needs additional evidence to prove his claim. Sauzek v.Exxon Coal USA, Inc., 202 F.3d 913, 918 (7th Cir. 2000) ("The

mere fact that one event preceded another does nothing to prove that the first event caused the second."). In addition, plaintiff may support his claim by coming forward with evidence that defendant's reasons for their actions are pretextual. Simple v. Walgreen Co., 511 F.3d 668 (7th Cir. 2007). A pretext is more than just a mistake or a foolish decision; it is a lie covering up a true retaliatory motive. Forrester v. Rauland-Borg Corp., 453 F.3d 416, 419 (7th Cir. 2006).

3. Mike Christensen and Byron Wirth

Plaintiff alleges that defendants Christensen and Wirth lied to him about the privileges he would have in segregation. Lying to plaintiff may have been morally wrong, but I am not aware of any federal law that it would violate in this context. Even if defendants lied as a part of a scheme to retaliate against plaintiff, he does not identify any harm he suffered as a result and he does not allege that either Christensen or Wirth was responsible for placing him in segregation. Accordingly, I am dismissing the complaint as to these defendants.

4. Susanna Pearson and James Wurrow

Plaintiff alleges that defendant Pearson "told me she [is] not [going to] give me my mail" and "has also refuse[d] to let me use the phone to call my lawyer." He alleges that

defendant Wurrow "played with" his mail. Plaintiff includes no other allegations about Pearson or Wurrow.

It is not clear whether plaintiff means to allege that Pearson and Wurrow took these actions to retaliate against plaintiff. He does not allege this explicitly and he does not explain why he believes they would do that or what conduct would have triggered the retaliatory acts. Accordingly, I cannot infer that either defendant took any actions because plaintiff exercised a constitutional right.

This does not necessarily doom plaintiff's claims. Prisoners have an independent constitutional right to receive mail and to communicate with their lawyer. Thornburgh v. Abbott, 490 U.S. 401, 413 (1989); Tucker v. Randall, 948 F.2d 388, 391 (7th Cir. 1991). The problem is that plaintiff's allegations do not state a claim upon which relief may be granted with respect to either right.

With respect to his mail, plaintiff alleges that Pearson "told" him that she was going interfere with his mail; he does not allege that she actually did so. Because plaintiff has been transferred to the Dodge Correctional Institution, Pearson will not be able to carry out her alleged threat.

Plaintiff alleges that Wurrow "played with" his mail, but he does not explain what he means by this, so it is impossible to tell whether Wurrow may have engaged in any conduct that violated plaintiff's rights.

Plaintiff's allegation that Pearson refused to allow plaintiff to speak to his lawyer seems inconsistent with his allegation that it was defendant Netz who cut off phone calls with plaintiff's lawyer. In any event, this allegation is also too vague. Telephone calls are subject to reasonable restrictions, even when they involve the prisoner's lawyer, Tucker, 948 F.2d at 391, so denying a telephone call does not necessarily violate plaintiff's constitutional rights. Again, because plaintiff does not describe any of the circumstances surrounding this allegation, it is impossible to determine whether a constitutional violation may have occurred.

If plaintiff believes he can prove that defendant Wurrow intentionally denied his mail, that defendant Pearson refused without justification to allow him to speak with his lawyer or that either of them retaliated against him for exercising a constitutional right, he is free to file an amended complaint that includes additional allegations about these claims. However, in their current form, his allegations are not enough to raise his claim above the level of speculation.

If plaintiff chooses to amend his complaint, he should be aware of the requirements of Federal Rule of Civil Procedure 20. Under that rule, plaintiff cannot sue different defendants on unrelated claims in the context of the same case. Thus, plaintiff will not be able to proceed with any claims against Pearson or Wurrow in the same case as his claim against Netz unless all of his claims arise out of the same set of facts.

ORDER

IT IS ORDERED that

1. Plaintiff Queinton Lavell Matthews, Jr. is GRANTED leave to proceed on his claim that defendant Andrew Netz placed him in administrative confinement and restricted his privileges because plaintiff exercised his First Amendment rights.

2. Plaintiff is DENIED leave to proceed on all other claims for his failure to state a claim upon which relief may be granted.

3. The complaint is DISMISSED as to defendants Byron Wirth, Susanna Pearson, Mike Christensen, Sheena Lube, James Wurrow and Joseph Keena.

4. For the remainder of this lawsuit, plaintiff must send defendant Netz 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 defendant Netz, he should serve the lawyer directly rather than defendant Netz. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant Netz or to defendant Netz's attorney.

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 their documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fees 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 fees have been paid in full.

6. A copy of the complaint, this order, summons for defendant Netz and United States Marshal service forms will be forwarded to the United States Marshal for service on Netz. Plaintiff should not attempt to serve defendant Netz on his own.

Entered this 4th day of June, 2012.

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