

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

KENNETH PARRISH,

Plaintiff,

v.

DEBORAH McCULLOCH and CAPTAIN
WILLIAM PARKER,

Defendants.

OPINION AND ORDER

12-cv-280-bbc

In his proposed complaint for compensatory and declaratory relief, pro se plaintiff Kenneth Parrish contends that defendants Deborah McCulloch and William Parker violated his right of access to the courts by holding his mail for insufficient postage, which caused him to miss appellate deadlines for two cases in which he was challenging his continued confinement as a sexual offender.

Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1), so I must screen his complaint to determine whether it states a claim upon which relief may be granted, as required by 28 U.S.C. §§ 1915(e)(2) and 1915A. Having reviewed the complaint, I conclude that it must be dismissed. Plaintiff's allegations and the public record show that defendants' conduct did not affect plaintiff's appeal to the Wisconsin Court of Appeals and plaintiff's claim that defendants interfered with his appeal to the Court of Appeals for the Seventh Circuit is not ripe. This disposition makes it unnecessary to decide whether holding mail for insufficient postage would amount to a

violation of plaintiff's constitutional right of access to the courts.

For purposes of this screening order, I construe the complaint liberally and accept plaintiff's allegations as true. Plaintiff's complaint is difficult to understand, because it consists primarily of portions of court orders and other documents without context. Where necessary for clarity, I have supplemented plaintiff's allegations with facts taken from the judicial dockets in plaintiff's state and federal cases.

ALLEGATIONS OF FACT

Plaintiff Kenneth Parrish is a patient at the Sand Ridge Secure Treatment Center. Defendant Deborah McCulloch is the director of the Sand Ridge Secure Treatment Center and defendant William Parker is its supervisor.

Plaintiff filed a petition for discharge under Wis. Stat. Ch. 980 in which he argued that he no longer qualified for confinement as a "sexually violent person." Wisconsin v. Parrish, Case No. 1998CI000012 (Milwaukee Co.). After the circuit court denied his petition, he filed an appeal challenging the denial, arguing that he was entitled to an evidentiary hearing on the petition. Wisconsin v. Parrish, Appeal No. 2011AP002029 (Wis. Ct. App.). Plaintiff submitted mail for the court of appeals to the mailroom at Sand Ridge Secure Treatment Center. The mailroom held his mail, allowing the "mail to accumulate until a sizable bundle had amassed, then forwarding it." As a result, plaintiff missed the deadline for filing his opening appellate brief. On January 23, 2011, the Wisconsin Court of Appeals dismissed his appeal for failure to prosecute under Wis. Stat. § 809.82(2)(a). However, on January 27, 2011, the court reconsidered its order, reinstated the appeal and

accepted the late-filed brief. On May 22, 2012, the court issued its opinion on the merits of plaintiff's appeal, affirming the order.

Plaintiff also filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Wisconsin, in which he alleged (among other things) a due process violation in connection with his petition for discharge. Parrish v. McCulloch, Case No. 11-cv-419-rtr (E.D. Wis.). In an order dated December 7, 2011, Judge Rudolph Randa concluded that plaintiff had not been denied due process and dismissed his petition, but he also issued a certificate of appealability. After plaintiff failed to file a timely notice of appeal, Judge Randa entered an order dated January 17, 2012, directing plaintiff to file a motion for extension of time if he wished to preserve appellate jurisdiction. Plaintiff filed a motion for an extension of time, but Judge Randa denied the motion because it was incoherent. Plaintiff's appeal has proceeded to briefing on both the jurisdictional issue and the merits, but the Court of Appeals for the Seventh Circuit has not yet issued any opinion in the matter. Parrish v. McCulloch, Case No. 12-1218 (7th Cir.).

In his complaint in this case, plaintiff included a letter from defendant McCulloch to "the Honorable Rudolph T. Randa of the United States Court of Appeals for the Seventh Circuit" in regard to Case No. 12-1218. McCulloch stated that she was writing in response to "the court's order dated February 24, 2012, ordering Kenneth Parrish Petitioner-Appellant to show cause for his failure to respond to the court's order of January 27, 2012." She said that plaintiff had submitted mail to the mailroom on January 4, 2012, but the mailroom held his mail until January 23, 2012, because he lacked sufficient funds for the postage and never told plaintiff that it was holding the mail. She explained that this action

had caused plaintiff to miss a deadline set by the court and prevented him from responding to the court's order.

OPINION

Prisoners have a constitutional right to “meaningful access to the courts” for the purpose of challenging their confinement and the conditions of their confinement, Bounds v. Smith, 430 U.S. 817, 821-22 (1977), but before a prisoner can sue for a denial of the right of access to the courts, he must allege that he has suffered an “actual injury” from some action of the defendants. Lewis v. Casey, 518 U.S. 343, 350-54 (1996). That injury can be “forward-looking,” that is, one caused by actions that are preventing the plaintiff from litigating a present or future lawsuit, or “backward-looking,” if the defendant's actions have caused the plaintiff to lose a lawsuit or a chance to sue. Christopher v. Harbury, 536 U.S. 403, 413-14 (2002).

Plaintiff contends that defendants violated his right of access to the courts by interfering with his appeal to the Wisconsin Court of Appeals, but he cannot prevail on this contention. It is clear from his allegations and the public record that defendants' actions did not prevent him from appealing the circuit court ruling. Although plaintiff alleges that defendants' decision to hold his mail caused him to miss the deadline for filing his brief, in fact, the Wisconsin Court of Appeals accepted his late filing and decided his case on the merits. Plaintiff had a full opportunity to challenge his confinement.

Plaintiff's second claim is that defendants violated his right of access to the courts by preventing him from filing a timely notice of appeal of Judge Randa's order denying his writ

of habeas corpus. This claim must be dismissed as well, but on a different ground. Plaintiff is complaining about something that has not yet happened; in legal terms, his claim is not “ripe” for consideration. “A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” Texas v. United States, 523 U.S. 296, 300 (1998) (quoting Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 581 (1985)). The Court of Appeals for the Seventh Circuit has not yet ruled that it lacks jurisdiction to hear plaintiff’s appeal, so it is not certain that plaintiff’s failure to file a timely notice of appeal will have any adverse effect on his writ of habeas corpus. Because it is not certain whether plaintiff has suffered any injury, this claim is not ready for consideration but will be dismissed without prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Kenneth Parrish is DENIED leave to proceed in forma pauperis in this action.
2. Plaintiff’s claim that defendants Deborah McCulloch and William Parker violated his right of access to the courts by interfering with his appeal to the Wisconsin Court of Appeals is DISMISSED with prejudice.
3. Plaintiff’s claim that defendants violated his right of access to the courts by interfering with his appeal to the Court of Appeals for the Seventh Circuit is DISMISSED without prejudice.

4. The clerk of court is directed to close this case.

Entered this 21st day of August, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge