

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

ROBERT EARL ALEXANDER,

Plaintiff,

OPINION AND ORDER

v.

12-cv-705-wmc

CAPTAIN CORE, et al.,

Defendants.

Plaintiff Robert Earl Alexander brings this proposed civil action under 42 U.S.C. § 1983, alleging civil rights violations in connection with the conditions of his confinement by the Wisconsin Department of Corrections. Alexander has been found eligible for indigent status and he has made an initial payment toward the full filing fee for this lawsuit as required by the Prison Litigation Reform Act (the “PLRA”), 28 U.S.C. § 1915(b)(2). Having filed a supplement to his complaint and a motion for preliminary injunctive relief, Alexander seeks leave to proceed.

Because Alexander is incarcerated, the PLRA requires the court to determine whether the proposed action is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. For reasons set forth briefly below, the court will deny leave to proceed and dismiss this case without prejudice.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant’s pleadings, the court must read the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the

court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts.

At all times pertinent to the complaint, Alexander has been incarcerated at the Waupun Correctional Institution ("WCI"). All of the defendants are employed at WCI: Captain Core, Officer Yunto, Tony Melie, Captain Holm, Officer Lobionca, Warden William Pollard, Don Strahota, Captain O. Donovan, Lieutenant Wenzel, Lieutenant Bauer, Captain Olson, Sergeant Dahlke, Sergeant Sawyer, Sergeant Lentz, Sergeant Lind, Officer Beahm, Sergeant Gremminger, Officer Harte, and Sergeant Anderson.

Alexander principally contends that Captain Olson and Sergeant Dahlke wrongfully confiscated and are threatening to destroy personal property that is related to one of his previous lawsuits. In *Alexander v. Sumnicht, et al.*, Case No. 11-cv-153-slc (W.D. Wis.), Alexander filed suit against a physician (Dr. Sumnicht) and health services manager (Belinda Schrubbe) at WCI, alleging that he was denied adequate medical care for hearing loss. On May 29, 2012, the court granted summary judgment in favor of defendants and dismissed that case because Alexander did not exhaust administrative remedies before filing suit as required by the PLRA. *See* 42 U.S.C. § 1997e(a).

Alexander alleges that he has now exhausted his administrative remedies with respect to the claims dismissed in Case No. 11-cv-153-slc. He does not, however, seek to renew his claims against Dr. Sumnicht and Belinda Schrubbe here. Rather, Alexander maintains that he has been unable to re-file that complaint as a new civil action because Captain Olson and Sergeant Dahlke confiscated four bags of legal materials and other

personal items on September 6, 2012, which related to that case.¹ Those items were apparently inventoried and seized when Alexander was placed in disciplinary segregation for an unspecified conduct violation. Nevertheless, Alexander maintains that he needs them so that he can re-file his now properly exhausted complaint in Case No. 11-cv-153-sl. Alexander contends, therefore, that Captain Olson and Sergeant Dahlke have violated his constitutional right to access the courts. Alexander seeks injunctive relief and damages in the amount of \$5 million.

OPINION

Section 1983 provides a remedy or private right of action against “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” 42 U.S.C. § 1983. To establish liability under § 1983, a plaintiff must establish that (1) he had a constitutionally protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989).

Despite the long list of defendants in this case, Alexander has not actually alleged that any defendant other than Captain Olson and Sergeant Dahlke did anything. Liability under 42 U.S.C. § 1983 must be based on a defendant’s personal involvement in the constitutional violation. *See Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir.

¹ Alexander attaches a WDOC property receipt form to his complaint.

2003); *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). Here, Alexander has alleged no facts suggesting any personal involvement with the seizure of Alexander's personal property that forms the basis for his complaint by Captain Core, Officer Yunto, Tony Melie, Captain Holm, Officer Lobionca, Warden William Pollard, Don Strahota, Captain O. Donovan, Lieutenant Wenzel, Lieutenant Bauer, Sergeant Sawyer, Sergeant Lentz, Sergeant Lind, Officer Beahm, Sergeant Gremminger, Officer Harte, or Sergeant Anderson. As a result, Alexander may not proceed against any of these defendants and his claims against them will be dismissed for failure to comply with Fed. R. Civ. P. 8.

Alexander does affirmatively allege that Captain Olson and Sergeant Dahlke violated his constitutional rights by seizing his personal property, thereby interfering with his ability to access the courts. Individuals have a right to obtain access to the courts and to pursue redress of grievances without undue interference. *See Snyder v. Nolen*, 380 F.3d 279, 291 (7th Cir. 2004). "The right of individuals to pursue legal redress for claims that have a reasonable basis in law or fact is protected by the First Amendment right to petition and the Fourteenth Amendment right to substantive due process." *Id.* (citing *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995); *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993) ("Meaningful access to the courts is a fundamental constitutional right, grounded in the First Amendment right to petition and the Fifth and Fourteenth Amendment due process clauses.")). A corollary is that efforts by state actors to impede an individual's access to courts or administrative agencies may provide the basis for a constitutional claim. *See Vasquez*, 60 F.3d at 328.

Even assuming that all of Alexander's allegations against Captain Olson and

Sergeant Dahlke are true, the court cannot grant him leave to proceed with his claims concerning these defendants because it is clear that he did not exhaust available administrative remedies before filing his complaint in this case. Alexander's pending civil rights complaint is dated September 11, 2012, less than a week after his personal property was confiscated. Alexander was required to first present his claims through the Inmate Complaint Review System ("ICRS"), which is available in all adult detention units operated by WDOC.² Given that this process contemplates an investigation and appeal from any adverse decision, he could not have completed the ICRS process or exhausted his administrative remedies before filing his complaint in this case.

The PLRA states that no civil action "shall be brought with respect to prison conditions" in federal court "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The exhaustion requirement found in § 1997e(a) applies to all inmate suits about prison life, "whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The Supreme Court has emphasized repeatedly that § 1997e(a) mandates exhaustion of all administrative procedures *before* an

² The Wisconsin Department of Corrections maintains an Inmate Complaint Review System ("ICRS") in all state adult correctional facilities so that inmate grievances about prison conditions may be expeditiously raised, investigated and decided. *See* Wis. Admin. Code DOC § 310.04. Once an inmate files a formal complaint, an Inmate Complaint Examiner (ICE) is assigned to investigate and recommend a decision to the "appropriate reviewing authority," such as a warden, bureau director, administrator or designee who is authorized to review and decide an inmate complaint at the institution level. *Id.* at § 310.07(2). If an inmate has submitted a proper complaint in compliance with ICRS procedure, *see id.* at § 310.11(5), he has the right to appeal any adverse decision to the Corrections Complaint Examiner ("CCE"), who will review the complaint and make a recommendation to the Office of the Secretary. *See id.* at § 310.13. The Secretary of the Wisconsin Department of Corrections shall review the CCE's report and make a final decision. *See id.* at § 310.14.

inmate can file any suit challenging prison conditions. *See Booth v. Churner*, 532 U.S. 731, 739 (2001); *Woodford v. Ngo*, 548 U.S. 81, 85 (2006); *see also Jones v. Bock*, 549 U.S. 199, 212 (2007) (confirming that “[t]here is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court”).

The Supreme Court has also emphasized that the exhaustion requirement found in § 1997e(a) mandates “proper exhaustion,” which demands compliance with prison procedural rules before suit is filed in federal court. *Woodford*, 548 U.S. at 93. This requirement was intended “to reduce the quantity and improve the quality of prisoner suits; to this purpose, Congress afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.” *Porter*, 534 U.S. at 524. By requiring exhaustion of administrative remedies, Congress hoped that “corrective action taken in response to an inmate’s grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation.” *Id.* (citing *Booth*, 532 U.S. at 737). In addition to filtering out potentially frivolous claims, Congress also believed that internal review would facilitate adjudication of cases ultimately brought to court by giving prison officials an opportunity to develop an administrative record that clarifies the contours of the controversy. *Id.* (citations omitted).

By his own admission, Alexander is well aware of the exhaustion requirement found in 42 U.S.C. § 1997e(a) from his previous lawsuit in Case No. 11-cv-153-slc. “[A] prisoner who does not properly take each step within the administrative process has failed to exhaust state remedies, and thus is foreclosed by § 1997e(a) from litigating.”

Pozo v. McCaughtry, 286 F.3d 1022, 1024 (7th Cir. 2002). Because it is evident that Alexander did not present his claims against Captain Olson and Sergeant Dahlke for administrative review before filing suit, his complaint against these defendants will be dismissed for failure to exhaust administrative remedies in compliance with 42 U.S.C. § 1997e(a). The dismissal will be without prejudice to his filing a new civil action once the exhaustion requirement has been met.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Robert Alexander's request for leave to proceed against Captain Core, Officer Yunto, Tony Melie, Captain Holm, Officer Lobionca, Warden William Pollard, Don Strahota, Captain O. Donovan, Lieutenant Wenzel, Lieutenant Bauer, Sergeant Sawyer, Sergeant Lentz, Sergeant Lind, Officer Beahm, Sergeant Gremminger, Officer Harte, or Sergeant Anderson is DENIED and the complaint against these defendants are DISMISSED for failure to state a viable claim for purposes of Fed. R. Civ. P. 8.
- 2) Plaintiff's request to proceed with claims against defendants Captain Olson and Sergeant Dahlke is DENIED and the complaint against these defendants is DISMISSED for failure to exhaust administrative remedies in compliance with 42 U.S.C. § 1997e(a). The dismissal is without prejudice to filing a new civil action once the exhaustion requirement has been met.

3) All other pending motions are DENIED as moot.

Entered this 14th day of August, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge