IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS W. ZACH,

Plaintiff,

v.

BRIAN BEAHM, ROBERT SCHENCK,
TROY HERMANS, JEFF PUGH,
KAREN GOURLIE, TODD JOHNSON,
TOM GOZINSKE, ISMAEL OZANNE,
AMY SMITH and JOHN or JANE DOE,

Defendants.

OPINION AND ORDER

13-cv-851-bbc

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Plaintiff Thomas Zach, a former prisoner at the Thompson Correctional Center, located in Deerfield, Wisconsin, filed a complaint in this case against several prison officials regarding interference with his mail, the grievance process following the interference and subsequent retaliation against him. In a March 6, 2014 order, I denied plaintiff leave to proceed on his First Amendment claims regarding mail interference and his due process claims regarding the grievance process, and dismissed plaintiff's complaint as to his retaliation claims and claim about being placed in segregation because his allegations were too vague to properly state claims under Fed. R Civ. P. 8. Now plaintiff has filed an amended complaint, which contains relatively little new material regarding the claims I previously screened but does contain new allegations about prison staff reading his mail.

I must screen plaintiff's amended complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. McGowan v. Hulick, 612 F.3d 636, 640 (7th Cir. 2010). After considering plaintiff's allegations, I conclude that plaintiff's allegations fail to state any claims upon which relief may be granted, so I will dismiss the case.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

At all times relevant to his complaint, plaintiff was incarcerated at the Thompson Correctional Center. On October 17, 2008, defendant correctional officer Brian Beahm opened mail sent by plaintiff's mother to plaintiff, and read the mail in the "officer control" area. Plaintiff told Beahm through the window that what he was doing was illegal. Beahm slammed the window shut without responding to plaintiff. Plaintiff received the letter the same day, but after Beahm had read the mail. Beahm did not receive authorization under Department of Corrections officials to read the mail.

Later that day, plaintiff "directed an in person" request to Beahm to speak with defendant Captain Schenck about Beahm's decision to read his mail. Beahm denied this request and told plaintiff to file a formal request.

On October 20, 2008, plaintiff filed an inmate grievance about the mail incident.

Later that day, plaintiff was given a conduct report by Beahm for "allegedly being in an 'unauthorized area' outside the center . . . minutes after saying good bye to [his] senior citizen parents." The conduct report was actually filled out on August 18 but was approved by defendant correctional officer Hermans on August 20. (I understand that plaintiff is admitting to violating prison rules but arguing that he did not need to receive a conduct report for such a minor infraction.) Captain Schenck found plaintiff guilty of creating a "serious disruption" by waving to his parents in the distance after a visit.

Defendant Todd Johnson (who plaintiff calls a corrections complaint examiner but appears to be operating as an institution complaint examiner, the staff member who initially reviews grievances) recommended dismissal of the plaintiff's grievance about the mail, citing a Department of Corrections regulation stating that "incoming mail addressed to inmates may be opened, examined, censored (read) and delivered . . . only if the inmate consents in writing to receive mail through institution mail services." Johnson stated further that plaintiff could rescind his consent but his mail would be returned to the sender as "refused."

Plaintiff appealed, and defendant Jeff Pugh dismissed his grievance. Plaintiff appealed to corrections complaint examiner Tom Gozinske and representative of the Department of Corrections secretary Amy Smith but his grievance was dismissed.

Beahm handed plaintiff a copy of Johnson's initial decision and stated that he (Beahm) was "untouchable." The envelope containing the decision had been opened even though plaintiff believes that this type of mail is supposed to be confidential. Beahm continued to "badger" plaintiff by kicking plaintiff's room door and "making up 'rules' not in the inmate handbook just to further persecute [plaintiff]."

During a scheduled lockdown and search of the facility, defendant Hermans stood next to plaintiff, twirling handcuffs in his hands before smiling and stating, "I'm just playing with you." Defendant Schenck stood by and did nothing to stop Hermans from harassing plaintiff.

Between November 14, 2009 and April 15, 2010, plaintiff saw Beahm reading mail from plaintiff's family 19 times. Beahm would do so by sitting in front of a window at the "officer control" station so that plaintiff could see him read it.

Plaintiff was sent to segregation April 17, 2009 to April 29, 2009 by defendants Schenck and Hermans for reasons never explained by them.

On April 23, 2010, defendant Beahm opened and read a letter sent to plaintiff by a friend, William Schmelzer. Beahm did not have any reason to believe that the mail created a safety risk or involved criminal activity and Beahm did not go through the administrative process required to open a prisoner's mail, which would have required authorization from defendant Hermans. Beahm did not let plaintiff see the letter.

Beahm gave defendant Schenck the letter for "supervisory review." Schenck called plaintiff to the business office, asked plaintiff how he knew Schmelzer and told plaintiff that he would not be receiving the letter, instead saying that "this letter was clearly intended for [defendant Beahm]." Plaintiff asked whether the letter referred to Beahm or contained any contraband, and Schenck responded, "No." Contrary to Department of Corrections rules, plaintiff was not immediately given a form explaining the basis for his mail being withheld. and defendants Beahm, Schenck or Hermans did not record the fact that they read plaintiff's

mail on the log they are required to maintain. When plaintiff finally saw the contents of the mail, he saw that there were no references to Beahm or any threatening language such that it would have been appropriate for Beahm to read the mail.

Plaintiff filed a grievance about this incident but it was dismissed by the various parties reviewing it, including defendants Johnson, Hermans, Gozinske and Ismael Ozanne. Johnson's decision stated in part:

> The denial was not based on contraband or gang concerns. Rather, it (certified letter) was denied as it contains blatant derogatory and vulgar language which is obviously directed at and written solely to berate TCC Security Staff. No reasonable person could read this letter and find it to be anything less than inflammatory, hurtful and counterproductive to the orderly operation of a Correctional Center.

Hermans reviewed the grievance despite his being named within the grievance itself as one of the parties violating plaintiff's rights.

On May 5, 2010, defendant Beahm opened and read a letter sent by Schmelzer to plaintiff without getting defendant Hermans's approval. Plaintiff tried to talk to Beahm about the letter but Beahm ignored him. Beahm did not let plaintiff have the letter. Instead, he gave it to defendant Schenck. Schenck told plaintiff, "I don't know what this guy's problem is, but, I can't let you have this letter either" and "this letter was clearly intended for [defendant Beahm] as well." Neither Beahm, Schenck nor Hermans gave plaintiff a form explaining the bases for withholding his mail within the time required under the administrative rules. When plaintiff finally saw the contents of the mail, he saw no references to Beahm or any threatening language that would have made it appropriate for Beahm to read the mail.

Plaintiff filed a grievance about the incident. In recommending its dismissal, defendant Johnson stated again that the letter "was denied as it contains blatant derogatory and vulgar language which is obviously directed at and written solely to berate TCC Security staff." Defendant Hermans dismissed the grievance despite being named in it. Plaintiff's appeals were dismissed by defendants Gozinske and Ozanne. While the final appeal before Ozanne was pending, plaintiff received a letter from defendant Karen Gourlie stating that the time for deciding the appeal was extended.

Between April 24 and November 6, 2010 (not including the May 5, 2010 incident discussed above), plaintiff saw Beahm reading mail from plaintiff's family 13 times. On one occasion, Beahm read a magazine sent to plaintiff.

None of the defendants followed the proper administrative procedures for opening, reading and taking plaintiff's mail.

OPINION

A. Previously Screened Claims

I understand plaintiff to be reasserting all of the claims from his previous complaint: claims under the First Amendment for the withholding of two pieces of mail and for alleged retaliation by defendants, as well a due process claim regarding his grievances and a claim about being placed in segregation for no reason. These claims fail for the same reasons I explained in the March 6, 2014 screening order.

Regarding the First Amendment mail interference claim, isolated instances of mail disruption or theft of reading material do not establish a constitutional violation. Rowe v.

Shake, 196 F.3d 778, 782 (7th Cir. 1999); Sizemore v. Williford, 829 F.2d 608, 610-11 (7th Cir. 1987). In addition, defendants' alleged violation of department regulations do not support a claim I can consider in this court. Scott v. Edinburg, 346 F.3d 752, 760 (7th Cir. 2003) ("42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations . . . ."); Outagamie County v. Smith, 38 Wis. 2d 24, 34, 155 N.W.2d 639, 645 (1968) (with respect to laws that are not made enforceable by statute expressly, action is reviewable only by state court certiorari proceeding).

To the extent plaintiff alleges that defendant Hermans violated his due process rights by ruling on grievances despite being named in the grievance itself as a party who violated his rights, prison officials are under no constitutional obligation to provide due process in the internal grievance system or, for that matter, provide any grievance system at all. Owens v. Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) ("Prison grievance procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged mishandling of Owens's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim."); see also Grieveson v. Anderson, 538 F.3d 763, 772-73 (7th Cir. 2008); Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996).

As for plaintiff's retaliation claims, he has added more allegations describing the retaliatory conduct undertaken by defendants, such as how defendant Beahm "badgered" him by kicking his door or defendant Hermans twirled handcuffs in front of plaintiff in a harassing manner. However, he has not fixed the problem with the retaliation claims I noted

in the March 6 order, which is that he does not explain how the alleged retaliatory actions are connected to any "protected conduct" of plaintiff's, so I cannot allow him to proceed on retaliation claims. Dkt. #4 at 7 ("Plaintiff believes that defendants opened his mail and gave him a conduct report for prior inmate grievances he filed, but he does not say when he filed those grievances, what they were about or why he thinks that defendants meant to retaliate against him.").

Plaintiff arguably does manage to flesh out one claim: that he received a conduct report for being in an unauthorized area right after he complained about Beahm reading his mail. However, even this claim fails because plaintiff admits he violated the rule he was charged with breaking. Hale v. Scott, 371 F.3d 917, 920 (7th Cir. 2004) ("If the prisoner can show that he did not violate the regulation, then he may have a remedy. But merely to show that the needs of the prison did not require that the regulation be enforced in the particular case against a particular prisoner and by means of the particular sanction chosen by the prison authorities does not justify federal judicial intervention.")

Plaintiff's claim that that he was placed in segregation for no reason fails as well because plaintiff did not provide any more information about that claim, such as a possible retaliatory basis for it. This claim will be dismissed.

B. New First Amendment Claim

The major change plaintiff has made in his amended complaint is to detail a claim about defendant Beahm routinely reading his mail. I stated the following about this claim

in the March 6 order:

> I note that plaintiff states that Beahm reads *all* incoming mail, but this does not appear to be the basis for his claim. Rather, he focuses on the interference with the three letters described above. If plaintiff means to bring a claim regarding defendant Beahm's practice of reading all incoming mail, he should provide an amended complaint providing further explanation about this issue, including what types of mail Beahm has read . . . and how it affected plaintiff.

Dkt. #6 at 5. Plaintiff's amended complaint contains allegations that defendant Beahm read plaintiff's incoming personal mail more than 30 times, apparently for the purposes of harassing him by purposely reading it in front of plaintiff. Although there are restrictions on how prison officials may open or inspect a prisoner's legal mail, Antonelli v. Sheahan, 81 F.3d 1422, 1431-32 (7th Cir. 1996), prison officials do not violate a prisoner's constitutional rights by opening, inspecting or reading a prisoner's "nonprivileged," personal mail. Martin v. Brewer, 830 F.2d 76, 77 (7th Cir. 1987); Gaines v. Lane, 790 F.2d 1299, 1304-05 (7th Cir. 1986) Smith v. Shimp, 562 F.2d 423, 425 (7th Cir. 1977). Therefore, plaintiff fails to state a First Amendment claim on this issue. In addition, as explained above, plaintiff's allegations that Beahm and other prison staff violated prison regulations in opening, reading and logging his mail do not state a claim in this court.

ORDER

IT IS ORDERED that

1. Plaintiff Thomas Zach is DENIED leave to proceed on the claims in his amended complaint, dkt. #7, and this case is DISMISSED for plaintiff's failure to state a claim upon

which relief may be granted.

2. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 14th day of May, 2014.

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