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

CORNELL SMITH,

Plaintiff,

v.

MS. ERICKSON, CAPT. GREFF, DONALD STRAHOTA, WILLIAMS POLLARD, RICH RAEMISCHER, LT. SABISH, and TONIA MOON,

Defendants.

OPINION AND ORDER

13-cv-600-wmc

In this proposed civil action, plaintiff Cornell Smith alleges that correctional officers and others employed by the Wisconsin Department of Corrections at Waupun Correctional Institution: (1) violated his rights under the Fourteenth and Eighth Amendments by denying him recreational time; and (2) violated his First Amendment rights by interfering with his attempts to utilize the prison grievance process. Smith seeks leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Johnson provided, the court previously concluded that he is unable to prepay the full fee for filing this lawsuit. He has since made the initial partial payment of $39.70 required of him under § 1915(b)(1). The next step is determining whether Smith's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. Because Smith does not meet this step, the court will deny him leave to proceed and dismiss this case.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, Smith alleges, and the court assumes for purposes of this screening order, the following facts:

- Smith is, and was for all times relevant to his complaint, an inmate at the Waupan Correctional Institution ("Waupun").

- Ms. Erickson, Captain Greff, Deputy Warden Donald Strahota, Lt. Sabish, and Chief Warden Mr. Williams Pollard are all employees with the Department of Corrections employed at Waupun. Ms. Erickson is the Structure Recreation Supervisor. Rick Raemisch is the former Secretary of the Department of Corrections.[1]

- On August 15, 2012, a correctional officer informed Smith that his name was removed from the recreational activity exercise list. That same day, Smith submitted a request slip to Erickson, asking why his name was removed. Erickson did not respond.

- On August 24, 2012, Smith submitted an inmate complaint. Ms. Kroll responded, asking Smith to forward his complaint to defendant Greff and to request a response.

- On September 6, 2012, Greff responded by stating, "You had [an unexcused absen[ce] and your name was removed."[2] (Compl. (dkt. #1) ¶ 15.) Though it is not entirely clear from the complaint, Ii appears that Smith *was* absent from recreational time, but claims that he had a "legitimate, [ex]cuse[d] absen[ce]," having missed recreational time to attend religious services. (*Id.*)

- On September 7, 2012, Smith submitted a second inmate complaint, challenging Erickson and Greff's belief that he was denied recreational time because of an unexcused absence. Smith contends that Kroll failed to investigate his complaint.

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[1] If Smith were granted leave to proceed, the court would substitute some of these defendants, but need not do so in light of the court's decision to dismiss this action.

[2] The complaint reads "none accused," though the court assumes plaintiff intended "none excused" or "unexcused."

- On October 22, 2012, plaintiff filed an appeal to the correctional complaint examiner in Madison.

- On December 7, 2012, plaintiff received a response from Deputy Warden Strahota on his complaint, but the court cannot discern from the pleadings the substance of that response.

- Plaintiff alleges that he "hasn't engaged in any type of physical health exercise activities in approximately four months." (Compl. (dkt. #1) ¶ 21.)

- At some unknown time, it appears from the complaint that plaintiff's recreational activities resumed. On February 13, 2013, "for the second time," Erickson allegedly denied plaintiff recreational activity time. Plaintiff contends that Erickson also failed to conduct an investigation as to his whereabouts before "stripping away" his rights to recreational time. (Compl. (dkt. #1) ¶ 29.)

- Plaintiff again filed an inmate complaint (or rather complaints) about this denial. Plaintiff contends that he filed eight complaints, some of which were not accepted and returned to plaintiff as part of a conspiracy to deny him his First Amendment rights to file inmate complaints. At least one of the complaints, however, was rejected and plaintiff appealed the rejection to defendant Strahota, who affirmed the rejection.

OPINION

Reading the complaint generously, Smith appears to be asserting three causes of action: (1) denial of recreational time as punishment for an unexcused absence in violation of his due process rights; (2) denial of recreation time as cruel and unusual punishment in violation of his Eighth Amendment rights; and (3) interference with the inmate grievance process in violation of his First Amendment rights. The court considers each claim in turn.

I. Due Process Claim

As a state inmate, Smith is entitled to protection under the Due Process Clause of the Fourteenth Amendment, but only if the alleged state action infringed upon a constitutionally-protected liberty interest. *See Sandin v. Conner*, 515 U.S. 472, 487 (1995). In *Sandin*, the Court held that prison disciplinary actions require due process safeguards only when they affect the duration of the prisoner's sentence or inflict an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." 515 U.S. at 484. The prisoner in *Sandin* challenged a 30-day sentence in disciplinary segregation, which deprived him of out-of-cell activities, as violating his due process rights. *Id.* at 486. The Court rejected his challenge, finding that these restrictions fell "within the range of confinement to be normally expected" as part of a prison sentence. *Id.* at 487. Similarly, Smith's allegation that he was denied access to a recreational program simply does not rise to the level of a liberty interest. *See, e.g.*, *Rutledge v. Lane*, 214 F.3d 1330, 2000 WL 589191, at *4 (7th Cir. May 25, 2000) (unpublished) (affirming district court's determination that prisoner's interest in "attending rehabilitative or recreational programs" are not protected by the Due Process Clause).

Even if Smith had a liberty interest in accessing a particular recreational program, he also fails to allege sufficient facts to find that the procedures he was afforded were constitutionally deficient. *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007). Indeed, Smith alleges facts that establish he was provided: (1) an opportunity to challenge the removal of his name from the recreational list; and (2) defendants provided a basis for

the decision, albeit one Smith rejects. Regardless, Smith's access to this program was eventually reinstated. Accordingly, the court will deny Smith leave to proceed on this claim.

II. Eighth Amendment Claim

The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon prison officials the duty to provide prisoners "humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). To constitute cruel and unusual punishment, conditions of confinement must be extreme. The Seventh Circuit has recognized that exercise is "a necessary requirement for physical and mental well-being," and has held that depriving prisoners of out-of-cell exercise opportunities may violate the Eighth Amendment. *Delaney v. DeTella*, 256 F.3d 679, 684 (7th Cir. 2001). The Seventh Circuit has also held, however, that "short-term denials of exercise" do not violate the constitution. *Thomas v. Ramos*, 130 F.3d 754, 764 (7th Cir.1997) (denial of outdoor exercise for 70 days permissible); *Harris v. Fleming*, 839 F.2d 1232, 1236 (7th Cir. 1988) (denial of out-of-cell exercise for 28 days permissible).

Here, Smith does not allege the dates for which he was denied recreational activity. Even if the denial was for a significant period of time, as far as the court can surmise, Smith does not allege that he was denied *all* access to out-of-cell time, but rather

simply was denied access to a particular recreational activity. Accordingly, the court will deny Smith leave to proceed with his Eighth Amendment claim as well.[3]

III. First Amendment Claim

Finally, Smith alleges that defendants engaged in a conspiracy to deny him his First Amendment rights to file inmate complaints. These allegations also fail to state a claim under the Constitution. While prison officials may not retaliate against a prisoner for filing a grievance, *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000), they are under no constitutional obligation to provide an effective grievance system or, for that matter, 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.").

Even if prison officials prevented Smith from completing the grievance process, they could prevail on a motion to dismiss the case for plaintiff's failure to exhaust his administrative remedies, *Dole v. Chandler*, 438 F.3d 804, 809 (7th Cir. 2006), but Smith does not have a separate claim for that conduct. Even if there were a First Amendment right to file prison grievances, Smith's allegation that defendants did not accept certain grievances does not constitute interference with his ability to file grievances, especially in

[3] To the extent that the court misunderstands plaintiff's allegations, he may file an amended complaint alleging that he was denied *all* access to out-of-cell exercise, if true, and the length of time he was denied.

light of the alleged fact that the prison did review at least one of his grievances and rejected it.

ORDER

IT IS ORDERED that plaintiff Cornell Smith's motion for leave to proceed is DENIED, and plaintiff's claims are dismissed

Entered this 10th day of December, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge