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

ORTEAL TYLER,

Plaintiff,
v.

OPINION & ORDER

16-cv-482-wmc

MICHAEL DITTMAN,
CYNTHIA NEUHAUSER, et al.,

Defendant.

Pro se plaintiff Orteal Tyler filed this complaint under 28 U.S.C. § 1983, alleging that the defendants have been improperly diverting funds from one of his prison accounts to pay down his restitution obligation, such that he does not have access to sufficient funds to meet his needs. Tyler has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. § 1915A. In addressing any *pro se* litigant's complaint, the court must construe the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, however, the court concludes that this case must be dismissed for the reasons that follow.

ALLEGATIONS OF FACT[1]

Tyler is currently incarcerated by the Wisconsin Department of Corrections ("DOC") at the Columbia Correctional Institution ("CCI"), located in Portage, Wisconsin. He names as defendants: the DOC; Michael Dittman, CCI's warden;

[1] For purposes of this order, the court assumes the facts above based on the allegations in Tyler's complaint, when viewed in a light most favorable to him.

Cynthia Neuhauser, the financial program supervisor for CCI and the DOC; A. Boatwright, an employee in the DOC's complaint examiners' office; and Karen Gourlie, a complaint examiner assistant.

On May 5, 2011, Tyler was sentenced to 15 years in prison by Milwaukee County Circuit Court Judge Richard Sankovitz, having been found guilty of first-degree reckless homicide pursuant to a plea agreement. *State of Wisconsin v. Tyler*, Case No. 2010CF5978. In addition, Tyler was ordered to pay restitution in the amount of $8,516.00 under the terms and conditions set forth in the judgment. According to Tyler, after arriving at CCI on November 11, 2011, the DOC nevertheless implemented its "own policies" regarding his restitution payments that do not comport with his judgment of conviction. In particular, Tyler believes the DOC adopted an improper "deduction method" that does not provide for payments of other debts until the restitution is satisfied, and improperly defines all funds in his accounts -- including gifts -- as "prison funds." (Compl., dkt. #1, at 9.) Tyler states that these methods contradict the court's judgment, and the money in his "release account" should be transferred into a "regular account."

Starting in 2015, Tyler began challenging the way the prison was paying off his restitution obligation by contacting CCI's business office, filing an inmate complaint, and seeking clarification from the Milwaukee County Circuit Court. Although Tyler does not describe these efforts in his complaint, Tyler attaches documents reflecting those challenges. Among the documents are several information request forms that Tyler submitted to CCI's business office objecting to the way CCI collected his restitution

payments from his account. Tyler specifically complains that the business office is "only supposed to deduct 25% from [his] wages, the rest goes into my regular account," (dkt. #1-1, at 14); and that the way the deductions are calculated leave him "with very little to handle [his] needs and legal matters" (*id.* at 16).

Tyler also includes documents describing and rejecting his inmate complaint on this same issue. Of note, on June 18, 2015, Inmate Complaint Examiner Isaac Hart rejected Tyler's appeal from CCI's denial of his inmate complaint as follows:

> A review of the inmate's Judgment of Conviction, Trust Account Information and DAI Policy show deductions from this inmate's account are being properly made. The institution's decision reasonably and appropriately addressed the issue raised by this inmate. On appeal, the inmate presented no information to warrant a recommendation overturning that decision.

(*Id.* at 19.)

Separate from this challenge, Tyler filed a *pro se* motion for clarification of payments for restitution and costs with the sentencing court. In response, that court entered the following amended judgment of conviction on August 10, 2015: "Court ordered obligations to be paid in the following order: 1) restitution to Mark Chambers, Jr., 2) restitution to Milwaukee County Health and Human Services, and 3) court costs, fees and surcharges." (Dkt. #1-1, at 4.) The state court further observed in a footnote that it "does not have jurisdiction over the DOC's actions with respect to withholding prison funds," and Tyler would have to address his concerns with the DOC's allocation of his funds through a civil remedy. (*Id.*)

Finally, Tyler attaches two letters, both dated September 28, 2015. In one, someone from CCI's business office named "K. Lloyd" acknowledges receipt of Tyler's

request regarding the deductions from his trust account that referenced his August 10, 2015, amended judgment of conviction. In the letter, Lloyd also states that the DOC acted in compliance with the court order, which "does not order the Restitution to be paid *in full* first," but "only orders that it be paid first." (Dkt. #1-1, at 9 (emphasis in original).) Finally, the letter asserts that the DOC is "following policy as allowed in Administrative Code 973.20 and DAI Policy 309.45.02." (*Id.*)

The second of the attached letters came from defendant Cynthia Neuhauser, CCI's and DOC's financial program supervisor, in response to Tyler's request to transfer his release funds into his regular fund account. Neuhauser states that the business office is required to follow the applicable policies on how release funds can be used set forth at DAI Policy 309.45.02 and 309.45. She further confirms that the business office's calculations have been proper:

> The Business Office is correct in deducting 10% from your wages and any incoming funds. There is no consideration for age or sentence structure. It is beyond the scope of the Warden's administrative duties to authorize your release account to be placed in your regular account for you to spend. There are specific items which release funds can be used for but hygiene is not one of them.

(*Id.* at 27.)

OPINION

Plaintiff does not explicitly reference any constitutional provision or federal statute that would give this court subject matter over his claim. Viewing his complaint generously, however, he may be attempting to assert that the way the DOC handles his money and pays his restitution order violates his due process rights. The Fourteenth

Amendment certainly prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

To claim these protections, plaintiff must first allege a protected liberty or property interest at stake. *Averhartv. Tutsie*, 618 F.2d 479, 480 (7th Cir. 1980). Here, plaintiff would appear to have pleaded at least an arguable property interest in the funds on deposit in his prison accounts, *see Campbell v. Miller*, 787 F.2d 217, 222 (7th Cir. 1986), including money sent to him from sources outside the prison, such as friends and family, *see Mahers v. Halford*, 76 F.3d 951, 954 (8th Cir. 1996). Assuming that plaintiff can establish such a property interest in funds held in his inmate account, however, Tyler must also demonstrate that the defendants have failed to afford him sufficient procedural protections from wrongful withholdings or deductions of those funds. *See Hamlin v. Vaudenberg,* 95 F.3d 580, 584 (7th Cir. 1996). Moreover, "[t]he requirements of due process are considerably relaxed in the setting of prison discipline." *Eads v. Hanks*, 280 F.3d 728, 729 (7th Cir. 2002). Specifically in the context of restitution orders, state corrections officials can generally enforce restitution orders provided that the underlying proceedings conform to the minimum requirements of procedural due process set forth in *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). *Campbell v. Miller*, 787 F.2d 217, 224 (7th Cir. 1986).

On the facts alleged, plaintiff has no due process claim. For one, the attachments to his complaint do not permit an inference that his restitution payments did not comply with the amended judgment of conviction. To begin, plaintiff does not challenge the existence or amount of his state court ordered restitution, nor does he claim that

payments should not be made. Rather, his focus is on exactly *how* the DOC manages his money to make those payments, while implicitly acknowledging that the DOC has the authority to manage his funds. Indeed, the amended judgment simply sets forth the order in which the payments should be made to each recipient; it does not, as plaintiff appears to allege, require the prison to make deductions in any specified way, exclude gift funds from execution *or* require that other debts be paid along with restitution. Rather, *as currently plead*, the deductions appear to have been made consistent with the state court's order, the DOC's statutory authority and DOC regulations governing how inmate funds should be disbursed for purposes of restitution. *See* Wis. Admin. Code § DOC 309.45 (permitting the DOC to manage inmate funds and "permit and forbid spending" to promote reintegration into society, prevent the exchange of contraband, develop a sense of responsibility, permit inmates to obtain personal property and give inmates the change to manage their funds).

Moreover, plaintiff cannot establish on the facts pleaded that any of the defendants denied him due process in arranging his restitution payment. *See Zinermon v. Burch*, 494 U.S. 113, 125 (1990) ("In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law."*) (emphasis in original). As set forth above, plaintiff was allowed to make multiple inquiries and bring multiple challenges as to whether CCI is making proper payments. In each instance, CCI's business office, inmate complaint examiners and financial supervisor reviewed the payment process and confirmed in

writing that Tyler's view was incorrect. There is also no indication on this record that Tyler was refused an opportunity, much less even pursued, an appeal of these informal or formal rulings. Regardless, these responses suggest that plaintiff received sufficient process to fulfill the requirements of the Fourteenth Amendment. *See Rasheed-Bey v. Duckworth*, 969 F.2d 357, 361 (7th Cir. 1992) ("Inmates have no right to confront and cross examine adverse witnesses; thus a disciplinary board's decision is not limited to evidence presented at the hearing."). Accordingly, the court will not permit him to proceed on this claim.

Finally, while Tyler claims to be pursuing only a federal claim, he at least alludes to his judgment of conviction as a "contract," and appears to seek enforcement of that contract. To the extent Tyler intends to seek a contract claim, it would obviously arise under Wisconsin state law, something this court could only address through the exercise of supplemental jurisdiction. *See* 28 U.S.C. § 1367(a) (the exercise of supplemental jurisdiction is appropriate when the state law claims are "so related" to the federal claims that "they form part of the same case or controversy"); *Carr v. CIG.UA Sec., Inc.*, 95 F.3d 544, 546 (7th Cir. 1996) (general rule is that federal courts should decline to exercise supplemental jurisdiction over state law claims if claims creating federal jurisdiction are dismissed prior to trial). Given that the court has found no federal claim on which plaintiff may proceed, however, the court declines to exercise supplemental jurisdiction over such a claim.

ORDER

IT IS ORDERED that:

(1) Plaintiff Orteal Tyler is DENIED leave to proceed on any claim, and this case is DISMISSED for failure to state a claim upon which relief can be granted in federal court.

(2) The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g) (barring a prisoner with three or more "strikes" or dismissals for a filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 7th day of May, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge