

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit**

**Chicago, Illinois 60604**

Submitted June 23, 2023\*

Decided July 11, 2023

**Before**

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-1784

DAVID D. DeBAUCHE,  
*Plaintiff-Appellant,*

*v.*

WISCONSIN DEPARTMENT OF  
CORRECTIONS, et al.,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Western District of  
Wisconsin.

No. 3:17-cv-00454-wmc

**William M. Conley,**  
*Judge.*

**ORDER**

David DeBauche, a Wisconsin prisoner, sued prison officials under 42 U.S.C. § 1983 for violating his First Amendment rights by restricting his access to legal materials in retaliation for a prior lawsuit. The district court screened DeBauche's

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\*We have agreed to decide the case without oral argument because the briefs and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

complaint and dismissed it for failing to state a claim of either retaliation or denial of access to courts. We affirm.

The factual background to this case is somewhat complicated. (Because defendants moved to dismiss on the pleadings, we accept the factual allegations in DeBauche's operative complaint as true, drawing all reasonable inferences in his favor. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020).) In a suit filed in 2013, DeBauche alleged that he was targeted for retaliation after he sought a restraining order against a correctional officer at Columbia Correctional Institute in Portage, Wisconsin. Three months later, he was placed in disciplinary segregation based on what he describes as a false conduct report. DeBauche does not say what role the defendants had in this decision, but he asserts that his placement in segregation isolated him from other inmates who might have helped him with his lawsuits and restricted his access to the prison's law library. His access to the library was further curtailed first by lockdowns in 2015 and later by a prison-wide policy that substantially reduced the time any inmate could spend in the library. DeBauche asserted further that prison staff members destroyed his legal materials after a cell move in 2014. They destroyed additional legal materials six more times after cell searches in 2016—actions, he says, that led to his 2013 case being dismissed.

In the summer of 2017, DeBauche brought two separate suits under § 1983 against dozens of prison officials alleging a multitude of constitutional violations. In the first complaint, which focused on his administrative confinement, he asserted that officials retaliated against him for his 2013 lawsuit, in violation of his First Amendment rights, and that this retaliation restricted his ability to obtain access to the courts. The second complaint dealt primarily with his medical care at the prison.

The district court screened both complaints under 28 U.S.C. § 1915A. It determined that they outlined at least 20 unrelated claims, opined that the complaints were too “unwieldy to proceed,” and dismissed both without prejudice under Rule 20 of the Federal Rules of Civil Procedure. The court instructed DeBauche that any amended complaint must be narrowed to focus on one set of related claims and defendants if he wished to proceed.

DeBauche, however, amended his complaint by adding more claims. The district court, in turn, dismissed the amended complaint under Rule 20 and entered judgment against him.

DeBauche then moved for reconsideration, stating that prison lockdowns and his placement in segregation had deprived him of access to reference materials he needed to litigate his case. He included a second amended complaint that highlighted his First Amendment retaliation and access-to-courts claims.

The district court accepted DeBauche's second amended complaint but dismissed it for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2). With regard to DeBauche's First Amendment retaliation claim, the court concluded that the complaint failed to allege that the defendants knew of his 2013 lawsuit or limited his library access because of that suit, and it was not reasonable to infer that any institution-wide restrictions were intended to punish him. As for DeBauche's access-to-courts claim, the court determined that he did not allege with any particularity how the prison officials impeded his ability to litigate his 2013 suit during the relevant period. Indeed, the court noted that DeBauche—while in segregation—had been able in those proceedings to respond to a summary judgment motion and pursue a summary judgment motion of his own.

On appeal, DeBauche reiterates that his 2013 lawsuit motivated the defendants to retaliate against him. In support, he emphasizes that the restrictions on his ability to access legal materials did not begin until after he filed the 2013 lawsuit.

The district court appropriately concluded that DeBauche did not state a claim of retaliation under the First Amendment. To state such a claim, DeBauche had to allege plausibly that he engaged in activity protected by the First Amendment, that he suffered some deprivation that would deter future First Amendment activity, and that his protected conduct motivated the prison officials' decision to retaliate. *145 Fisk, LLC v. Nicklas*, 986 F.3d 759, 766 (7th Cir. 2021). Even if we assume that DeBauche adequately pleaded the first two elements, he failed to allege a plausible causal link between his lawsuit and the alleged retaliation. DeBauche did not say when any named defendant knew of the 2013 suit or what role any of them played in the decision to place him in segregation. Likewise, DeBauche's allegations that his legal materials were destroyed years later by non-defendant prison staff members do not allow for a reasonable inference that the destruction was intended to punish DeBauche for his 2013 lawsuit. And we agree with the district court that Debauche's allegations of prison-wide restrictions do not support an inference that those restrictions were intended to punish DeBauche. He does not allege that he was affected differently from other prisoners, and the gaps between his 2013 lawsuit and the 2015 lockdown or 2017 library-use policy do not support an inference of causation from timing alone. *See Carlson v. CSX Transp., Inc.*,

758 F.3d 819, 828 (7th Cir. 2014). Because DeBauche has not alleged facts that could permit a reasonable inference that defendant prison officials retaliated against him, this claim was properly dismissed.

Next, DeBauche introduces a new argument on appeal relating to the standing of jailhouse lawyers to assert fellow inmates' access-to-courts claims. But he waived this access-to-courts argument by failing to raise it first in the district court. *See Johnson v. Prentice*, 29 F.4th 895, 903 (7th Cir. 2022). Moreover, his brief does not engage with the district court's reasoning. *See Klein v. O'Brien*, 884 F.3d 754, 757 (7th Cir. 2018).

AFFIRMED