NONPRECEDENTIAL DISPOSITION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 April 5, 2023*
Decided April 13, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2423

CALVIN LEE BROWN,
Plaintiff-Appellant,

v.

KEVIN CARR, et al.,
Defendants-Appellees.

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

No. 20-cv-206-bhl

Brett H. Ludwig,
Judge.

O R D E R

Calvin Brown sued several correctional officers and other staff at Racine Correctional Institution, alleging that they: (1) created inhumane conditions of confinement by limiting the availability of bathrooms; (2) transferred him in retaliation

* We have agreed to decide the case without oral argument because the briefs and 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).

for filing grievances and a state-court lawsuit about bathroom access; and (3) suspended him from the prison library, impeding his ability to access the courts and causing him to miss the deadline for challenging his transfer in court. The district court narrowed the claims and defendants at screening, concluded that Brown failed to exhaust administrative remedies with respect to some claims, and ruled against Brown at summary judgment. Brown appeals each decision, and we affirm.

Background

Brown, who has an unspecified medical condition that causes an urgent need to relieve himself, repeatedly experienced difficulties accessing bathrooms at Racine. In December 2017, his housing unit's bathroom was flooded, so he asked an officer to find out if he could use the one in the prison's programs building, where he worked in the library. An officer there denied the request telephonically. Brown asked twice more upon arriving for work that morning, but he was made to wait until the bathroom opened half an hour later, and he soiled himself before then. In June 2018, this happened on two more occasions when Brown could not immediately enter the single restroom in the programs building.

After Brown's inmate complaint about the December 2017 incident was dismissed, he wrote letters to a supervising correctional officer, Ted Serrano, to express his concern that just one locked bathroom with one toilet was available to inmates in the programs building, during limited hours. To enter, inmates first had to obtain a pass, then go elsewhere to retrieve the key. Racine's then-Security Director, Jason Wells, reviewed one of Brown's letters, which pertained to the June 2018 incidents; he responded that correctional staff had not improperly denied access to the bathroom, which was in use on one occasion and out of service on another. Wells also reminded Brown that if he was incontinent, he could remain in his unit close to a bathroom. Brown wrote Wells back twice, detailing why he believed the restroom policy was inhumane. He also submitted more inmate complaints about the bathroom incidents, but a complaint examiner returned them for various reasons, including that Wells and a deputy warden were already considering Brown's letters.

Brown eventually wrote to Paul Kemper, the warden at the time, to complain about the limited access to bathrooms in the programs building. The warden forwarded the letter to the education director, who lengthened the bathroom hours within a week. The security director also opened another bathroom. After that, Brown complained of one more instance of soiling himself in the programs building (when a key was broken in the lock). Brown also wrote to Kevin Carr, the Secretary of the Wisconsin Department of Corrections, to say that the bathroom restrictions violated his constitutional rights.

Separately, Brown had two security reclassification hearings in 2018. In these scheduled reviews, the classifications committee initially suggested placing Brown at a facility with a minimum-security level, below Racine's medium-security level, but later recommended keeping Brown at Racine. He appealed, and the relevant Department of Corrections administrator decided that Brown could be housed safely in a "fenced minimum setting" and that he should be transferred accordingly. Brown, who believed that he was entitled to an even lower security status, objected to a transfer (to Prairie du Chien, which he considered "more oppressive").

In February 2019, Brown was researching how to file a proper petition for a writ of certiorari—the first step in Wisconsin for obtaining judicial review of Department of Corrections decisions on classifications and transfers. But a librarian discovered that Brown's library account had been used to access a pornographic video online. Brown, whose petition was due by March 28, was suspended from his library job and ordered not to return until further notice. Brown did not inform the education office or library staff of a specific court deadline for his petition, and he was allowed back in the library on March 13, 2019—15 days before it was due. His eventual filing was postmarked April 19, 2019, and so his petition was dismissed as late.

In May 2019, Brown filed an equitable action in state court against Carr and the warden challenging the bathroom policy at Racine, but his eventual transfer mooted it.

Brown then sued over 20 defendants in federal court under 42 U.S.C. § 1983, seeking damages. In his (operative) amended complaint, he alleged that the limited bathroom access in the programs building resulted in inhumane living conditions and that his library suspension interfered with his right to access the courts. He further alleged that the defendants transferred him in retaliation for filing inmate complaints and the state conditions-of-confinement challenge.

At screening under 28 U.S.C. § 1915A, the district court allowed an Eighth Amendment conditions-of-confinement claim against Serrano, Wells, the warden, an official (Stephanie Hove) who once responded to Brown on Carr's behalf, and three complaint examiners who allegedly covered up constitutional violations. The court determined that other defendants, like the officer who denied Brown's bathroom request when he arrived at the programs building in December 2017, were unaware of his ongoing issues with bathroom access. The court also allowed Brown to proceed on a First Amendment retaliation claim against the warden and Carr, the only defendants who surely knew of the bathroom-related state lawsuit because they were parties to it. Finally, the court dismissed the access-to-court claim because the timing of the library suspension did not match up with the deadlines for filing the certiorari petition.

Brown filed two motions for reconsideration. He asserted that he was wrongly banned from the library and did not delay completing his petition after he could return, and further, that defendants besides the warden and Carr knew about his state lawsuit. The court declined to reconsider its screening decisions. It also denied Brown's motion for leave to amend his complaint again, concluding that further amendment would be futile because Brown's complaint described the relevant events in great detail. The court noted it would summarily deny any more amendment requests, and it did so when Brown filed another motion and submitted a proposed amended complaint.

The three inmate complaint examiners then moved for partial summary judgment, contending that Brown failed to exhaust administrative remedies with respect to his claims against them. *See* 42 U.S.C. § 1997e(a). The court agreed that the record did not demonstrate that he had filed inmate complaints giving notice of the alleged concealment of constitutional violations. *See* WIS. ADMIN. CODE § DOC 310.07.

Brown then moved for the recruitment of pro bono counsel. Satisfied that Brown could represent himself given his coherent filings, the court denied the request, noting that limited access to legal resources, alone, is not grounds for recruiting counsel.

After discovery, the remaining defendants moved for summary judgment, and the court granted their motion. It explained that undisputed evidence showed that Carr and Hove were not personally involved in any alleged deprivation, and their after-the-fact knowledge of Brown's troubles did not give rise to liability. Further, the warden was not involved in Brown's transfer, so the retaliation claim against him failed. Finally, the court explained, a 30-minute wait to use the bathroom is not an extreme deprivation, and no defendant was "personally involved in any [bathroom] incident[]."

Analysis

On appeal, Brown challenges numerous adverse rulings, beginning with the screening decision, which we review de novo. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). First, Brown argues that the court erred in allowing him to proceed against only Carr and the warden on the retaliation claim. But, to the extent Brown named anyone even involved in reclassifying or transferring him, the amended complaint did not include factual allegations suggesting that they knew about, or were motivated by, his protected activity—filing inmate complaints and a lawsuit about bathroom access. *See Siddique v. Laliberte*, 972 F.3d 898, 901–02 (7th Cir. 2020).

Second, Brown contends that the court improperly dismissed his access-to-court claim against the officer who suspended his library access. But dismissal was

appropriate. For a claim to survive screening, the complaint must provide "allegations that raise a right to relief above the speculative level." *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011) (citation omitted). Brown alleged that he lacked time to prepare a certiorari petition because of the suspension, but he gave no defendant information about court deadlines. Nor does his complaint say what materials he needed but could not access, or why he was unable to timely submit his petition after regaining access to the library on March 13. Thus, he did not state a claim that this officer "hindered his efforts to pursue" a nonfrivolous legal claim. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996).

Because the district court had sound reasons for these screening decisions, we further conclude that it did not abuse its discretion when it denied Brown's motions to reconsider them. *Gonzalez-Koeneke v. West*, 791 F.3d 801, 807 (7th Cir. 2015). The court concluded that Brown had not identified material errors, and we agree.

Next, Brown argues, the court erred in denying his motions for leave to file a second amended complaint. "Generally, denials of leave to amend are reviewed for abuse of discretion," although "review … of futility-based denials includes *de novo* review of the legal basis for the futility." *Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015). Brown's first motion to amend was not accompanied by a proposed amended complaint, and the motion itself did not explain how a revised complaint could augment his allegations. Instead, it largely repeated the allegations in the amended complaint. As for the second motion and accompanying proposed amended complaint, the court, which had warned that further motions to amend would be denied, acted within its discretion in requiring the case to move forward. Brown wanted to clarify the role of the officer who first declined to allow him early access to the bathroom in the programs building, but the complaint did not suggest she did anything but enforce the bathroom hours in effect, which is not deliberate indifference unless she had knowledge of special circumstances. Brown did not explain how he would plead differently on that point. *See Fosnight v. Jones*, 41 F.4th 916, 925 (7th Cir. 2022) (citation omitted).

Brown also contends that the court abused its discretion by not recruiting counsel to represent him. But the court applied the correct standard, which we articulated in *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) (en banc), and it reached a reasonable decision. It was satisfied that Brown made reasonable attempts to obtain counsel on his own, but it determined based on his performance that he was competent to litigate the case himself given its level of difficulty. *See id*. at 655.

Brown next challenges the partial summary-judgment ruling, disagreeing with the conclusion that he did not exhaust administrative remedies with respect to his

claims against the three inmate complaint examiners. To exhaust administrative remedies, an inmate must comply strictly with the prison's rules for filing grievances and appeals. *See Jones v. Bock*, 549 U.S. 199, 204 (2007); *Woodford v. Ngo*, 548 U.S. 81, 90 (2006); *Lockett v. Bonson*, 937 F.3d 1016, 1025 (7th Cir. 2019). Brown suggests that his grievances gave notice of the alleged concealment of constitutional violations. But the record establishes that he did not file inmate complaints about the complaint examiners' alleged cover-up, so he failed to exhaust his administrative remedies properly.

Finally, Brown challenges the summary-judgment ruling on his First and Eighth Amendment claims. We review the decision de novo and construe the evidence in the light most favorable to Brown. *See Stockton v. Milwaukee County*, 44 F.4th 605, 614 (7th Cir. 2022). As to the retaliation claim against Carr and the warden, the only two defendants that the court determined at screening could have a retaliatory motive, the record contains no evidence that either of them was, in fact, personally involved in the decision to transfer Brown. (The record establishes that a Department of Corrections administrator transferred Brown.) Because § 1983 limits liability to those who are personally responsible for a constitutional violation, *Williams v. Shah*, 927 F.3d 476, 482 (7th Cir. 2019), judgment for these defendants was proper.

Brown also fell short of demonstrating that his conditions of confinement were unconstitutional. To the extent Brown argues that his inability to use the restroom on occasion deprived him "of the minimal civilized measure of life's necessities," he did not establish a deprivation so "extreme" as to violate the Eighth Amendment. *Delaney v. DeTella*, 256 F.3d 679, 683 (7th Cir. 2001) (citation omitted). Even if he had, no reasonable jury could find that any defendant was deliberately indifferent to the situation. *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008). Brown notified these defendants *after* he was unable to access the bathroom; they were not personally involved in limiting his bathroom access. In any case, deliberate indifference could not be inferred from this record, which shows that Serrano lacked authority to resolve the issue, Wells investigated the incidents brought to his attention and increased bathroom availability in the programs building, and the warden coordinated with the education director to adjust the bathroom hours.

AFFIRMED