

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-03084-BNB

DARNELL BONNER,

Plaintiff,

v.

L. J. MILUSNIC, Associate Warden,

Defendant.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 16 2011

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff, Darnell Bonner, is a prisoner in the custody of the Wisconsin Department of Corrections who currently is incarcerated at a correctional facility in Waupun, Wisconsin. Mr. Bonner filed *pro se* a civil rights complaint for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), alleging that Defendant has violated his rights under the United States Constitution. Mr. Bonner has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 without payment of an initial partial filing fee.

Subsection (e)(2)(B) of § 1915 requires a court to dismiss *sua sponte* an action at any time if the action is frivolous, malicious, or seeks monetary relief against a defendant who is immune from such relief. A legally frivolous claim is one in which the plaintiff asserts the violation of a legal interest that clearly does not exist or asserts facts that do not support an arguable claim. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

Mr. Bonner is cautioned that his ability to file a civil action or appeal in federal court *in forma pauperis* pursuant to § 1915 may be barred if he has three or more actions or appeals in any federal court that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. **See** § 1915(g). Pursuant to § 1915(g), the Court may count dismissals entered prior to the enactment of this statute. ***Green v. Nottingham***, 90 F.3d 415, 420 (10th Cir. 1996).

The Court must construe the complaint liberally because Mr. Bonner is not represented by an attorney. **See *Haines v. Kerner***, 404 U.S. 519, 520-21 (1972); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991). ***Hall***, 935 F.2d at 1110. However, the Court should not act as a *pro se* litigant's advocate. **See *Hall***, 935 F.2d at 1110. For the reasons stated below, the complaint and the action will be dismissed pursuant to § 1915(e)(2)(B) as legally frivolous.

Mr. Bonner alleges that on approximately November 8, 2010, he attempted to use the Wisconsin prison mail system while he was confined at the Waupun Correctional Institution to correspond with his biological uncle, Jeff Fort, who was incarcerated at the United States Penitentiary, Administrative Maximum (ADX), in Florence, Colorado. He further alleges that on approximately November 25, 2010, he received return correspondence from Defendant, L. J. Milusnic, ADX associate warden, explaining that the letter to Mr. Fort was not delivered because inmate-to-inmate correspondence is not approved. As his first and only claim, Mr. Bonner complains that his First Amendment rights were violated.

Mr. Bonner is mistaken. Some First Amendment rights are simply inconsistent

with the corrections system's "legitimate penological objectives," *Pell v. Procunier*, 417 U.S. 817, 822 (1974), and thus the United States Supreme Court has sustained restrictions on inmate-to-inmate correspondence as reasonably related to valid corrections goals. *Turner v. Safley*, 482 U.S. 78, 93 (1987); *see also Shaw v. Murphy*, 532 U.S. 223, 228-31 (2001) (noting there is no special protection for legal communications among inmates). As a result, Mr. Bonner's First Amendment rights were not violated, and the complaint is legally frivolous and must be dismissed.

Accordingly, it is

ORDERED that the complaint and the action are dismissed as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

DATED at Denver, Colorado, this 16<sup>th</sup> day of March, 2011.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-03084-BNB

Darnell Bonner  
Prisoner No. 287938  
Wisconsin Resource Center  
PO Box 220  
Winnebago, WI 54985

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on March 16, 2011.

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk