

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>GREGORY COLLINS-BEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 09-cv-921-JPG</b>
	)	
<b>DONALD A. HULICK, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM AND ORDER**

**GILBERT, District Judge:**

Plaintiff Gregory Collins-Bey, an inmate in the Menard Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**– The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**– On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
  - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
  - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1555, 1564 (2007). Upon careful review of the

complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; portions of this action are subject to summary dismissal.

### **THE COMPLAINT**

In January 2008, Collins-Bey was scheduled to testify in federal court as a witness in a civil rights lawsuit filed by another inmate, Jason Williams.<sup>1</sup> The basis of that lawsuit was a policy at Menard that required inmates to “take down” their dreadlocks in order to move about the prison. According to Williams’s complaint, he had been restricted to his cell in segregation due to his refusal to remove his dreadlocks, and he had lost significant good conduct credit related to his persistent refusal to remove his dreadlocks. Collins-Bey, an inmate at Menard, had worn dreadlocks for many years without incident. However, upon receipt of the court notice to bring Collins-Bey to court on January 29, 2008, Defendants Hulick and Spiller began an effort to coerce Collins-Bey to cut his hair.

Their first effort was in early January 2008, after Collins-Bey requested a furlough to attend his mother’s funeral. Hulick and Spiller told him that if he cut his hair, he would be granted that furlough. Collins-Bey explained to them that he had an agreement with the I.D.O.C. that he could wear his hair in dreadlocks, but they persisted. Collins-Bey refused to cut his hair unless and until he had been to the funeral, but Defendants would not agree; they insisted that he cut his hair before going to the funeral. As a result, he did not attend the funeral. Moreover, he received a disciplinary ticket for disobeying a direct order, and he was taken to segregation. At some point thereafter, but before his court appearance, Defendant Spiller directed the tactical team to restrain Collins-Bey while his hair was forcibly cut.

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<sup>1</sup> See *Williams v. Snyder*, Case No. 02-cv-1177-GPM-PMF (S.D. Ill., filed Nov. 25, 2002).

## **LEGAL CLAIMS**

### ***Retaliation***

Collins-Bey first alleges that Defendants actions, described above, were motivated by retaliation for his intent to testify in court against the I.D.O.C. Thus, he asserts that his First Amendment rights to freedom of speech were violated. He seeks monetary damages, an injunction barring the I.D.O.C. from cutting his hair, and an apology.

Prison officials may not retaliate against inmates for filing grievances or otherwise complaining about their conditions of confinement. *See, e.g., Walker v. Thompson*, 288 F.3d 1005 (7<sup>th</sup> Cir. 2002); *DeWalt v. Carter*, 224 F.3d 607 (7<sup>th</sup> Cir. 2000); *Babcock v. White*, 102 F.3d 267 (7<sup>th</sup> Cir. 1996); *Cain v. Lane*, 857 F.2d 1139 (7<sup>th</sup> Cir. 1988). It follows, logically, that they may not retaliate against an inmate who provides testimony against the prison or its officials. At issue here is whether Collins-Bey experienced an adverse action that would likely deter First Amendment activity in the future, and if the First Amendment activity was “at least a motivating factor” in the Defendants’ decision to take the retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 551 (7<sup>th</sup> Cir. 2009).

This is a question that cannot be resolved at the pleading stages of this case. Thus, the Court is unable to dismiss this retaliation claim against Hulick and Spiller at this time.

### ***Procedural Due Process***

Collins-Bey then alleges that he was denied procedural due process protections by Defendants Goforth and Lee, who presided over the Adjustment Committee hearing. He states that they refused to call his requested witnesses or allow him to present exonerating evidence and, as a result, he was punished with 90 days in segregation.

When a plaintiff brings an action under § 1983 for procedural due process violations, he must show that the state deprived him of a constitutionally protected interest in “life, liberty, or property” without due process of law. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). An inmate has a due process liberty interest in being in the general prison population only if the conditions of his or her confinement impose “atypical and significant hardship...in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995). The Seventh Circuit Court of Appeals has adopted an extremely stringent interpretation of *Sandin*. In this Circuit, a prisoner in disciplinary segregation at a state prison has a liberty interest in remaining in the general prison population only if the conditions under which he or she is confined are substantially more restrictive than administrative segregation at the most secure prison in that state. *Wagner v. Hanks*, 128 F.3d 1173, 1175 (7<sup>th</sup> Cir. 1997). If the inmate is housed at the most restrictive prison in the state, he or she must show that disciplinary segregation there is substantially more restrictive than administrative segregation at that prison. *Id.* In the view of the Seventh Circuit Court of Appeals, after *Sandin* “the right to litigate disciplinary confinements has become vanishingly small.” *Id.* Indeed, “when the entire sanction is confinement in disciplinary segregation for a period that does not exceed the remaining term of the prisoner’s incarceration, it is difficult to see how after *Sandin* it can be made the basis of a suit complaining about a deprivation of liberty.” *Id.*

In the case currently before the Court, Collins-Bey was sent to disciplinary segregation for 90 days. Nothing in the complaint or exhibits suggests that the conditions that he had to endure while in disciplinary segregation were substantially more restrictive than administrative segregation in the most secure prison in the State of Illinois. Therefore, his due process claim is without merit, and it will be dismissed.

### *Grievances*

Collins-Bey's final claim is that Defendants Benton and Walker denied his grievances over this matter. However, "a state's inmate grievance procedures do not give rise to a liberty interest protected by the due process clause." *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7<sup>th</sup> Cir. 1995). Moreover, an inmate does not have a protected liberty interest in receiving a favorable response, or any response at all, to his grievances. Accordingly, he has failed to state a claim upon which relief may be granted, and this claim will be dismissed.

### **DISPOSITION**

**IT IS HEREBY ORDERED** that the claims regarding the disciplinary proceeding and denial of his grievances are **DISMISSED** from this action with prejudice. Also, because no claims remain pending against them, Defendants **GOFORTH, LEE, BENTON** and **WALKER** are **DISMISSED** from this action with prejudice. Plaintiff is advised that, within the Seventh Circuit, dismissal of these claims and defendants count as a strike for purposes of § 1915(g). *See George v. Smith*, 507 F.3d 605, 607-08 (7<sup>th</sup> Cir. 2007); *Boriboune v. Berge*, 391 F.3d 852, 855 (7<sup>th</sup> Cir. 2004).

**IT IS FURTHER ORDERED** that Plaintiff shall complete and submit a USM-285 form for Defendants **HULICK** and **SPILLER** within **THIRTY (30) DAYS** of the date of entry of this Memorandum and Order. The Clerk is **DIRECTED** to send Plaintiff TWO (2) USM-285 forms with Plaintiff's copy of this Memorandum and Order. **Plaintiff is advised that service will not be made on a defendant until Plaintiff submits a properly completed USM-285 form for that defendant.**

The Clerk is **DIRECTED** to prepare Form 1A (Notice of Lawsuit and Request for Waiver

of Service of Summons) and Form 1B (Waiver of Service of Summons) for Defendants **HULICK** and **SPILLER**. The Clerk shall forward those forms, USM-285 forms submitted by Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The United States Marshal is **DIRECTED**, pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, to serve process on Defendants **HULICK** and **SPILLER** in the manner specified by Rule 4(d)(2) of the Federal Rules of Civil Procedure. Process in this case shall consist of the complaint, applicable forms 1A and 1B, and this Memorandum and Order. For purposes of computing the passage of time under Rule 4(d)(2), the Court and all parties will compute time as of the date it is mailed by the Marshal, as noted on the USM-285 form.

With respect to former employees of Illinois Department of Corrections who no longer can be found at the work address provided by Plaintiff, the Department of Corrections shall furnish the Marshal with the Defendant's last-known address upon issuance of a court order which states that the information shall be used only for purposes of effectuating service (or for proof of service, should a dispute arise) and any documentation of the address shall be retained only by the Marshal. Address information obtained from I.D.O.C. pursuant to this order shall not be maintained in the court file, nor disclosed by the Marshal.

The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received. If a waiver of service is not returned by a defendant within **THIRTY (30) DAYS** from the date of mailing the request for waiver, the United States Marshal shall:

- Request that the Clerk prepare a summons for that defendant who has not yet returned a waiver of service; the Clerk shall then prepare such summons as requested.

- Personally serve process and a copy of this Order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Federal Rule of Civil Procedure 4(d)(2) unless the defendant shows good cause for such failure.

Plaintiff is **ORDERED** to serve upon defendant or, if appearance has been entered by counsel, upon that attorney, a copy of every further pleading or other document submitted for consideration by this Court. He shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date that a true and correct copy of any document was mailed to defendant or his counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint, and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Plaintiff is **ADVISED** of his continuing obligation to keep the Clerk and each opposing party informed of any change in his whereabouts during the pendency of this action. This notification

shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. *See* FED.R.CIV.P. 41(b).

**IT IS SO ORDERED.**

**Dated: May 20, 2010.**

**s/ J. Phil Gilbert**  
**U. S. District Judge**