

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

THOMAS W. ZACH,

Plaintiff,

v.

JERRY MARWITZ, STEVEN RHODE,
BRIAN DOMMISSE, RENEE SCHUELER,
KAREN GOURLIE, JODINE DEPPISCH
and JOHN or JANE DOE,

Defendants.

OPINION AND ORDER

13-cv-850-bbc

Plaintiff Thomas Zach, a former inmate at the Fox Lake Correctional Institution, brings this lawsuit against several prison officials regarding interference with his mail and subsequent retaliation against him. In a March 5, 2014 order, I screened plaintiff’s complaint and denied him leave to proceed on First Amendment claims against defendant Jerry Marwitz for “two alleged incidents of interference with mail over a several-month span.” Dkt. #4. Also, I stated that plaintiff’s claims of retaliation (plaintiff later received and was found guilty of a conduct report and his grievance about the mail was denied) were too vague to explain why he thought defendants meant to retaliate against him, and gave him a chance to submit an amended complaint setting forth the basis for his retaliation claims in more detail. Id.

Now plaintiff has filed an amended complaint, dkt. #7, in which he attempts to

explain his claims further. Plaintiff does not include any information about his disciplinary proceedings that persuades me that any of the defendants involved with those proceedings retaliated against him, so I conclude that he has failed to state a claim upon which relief may be granted with regard to those claims. The only information that adds to my understanding of plaintiff's claims is his clarification that the two incidents of mail interference occurred two weeks apart, not several months apart, and his allegation that defendant Marwitz intentionally interfered with his mail the second time as an act of retaliation for plaintiff's complaint about Marwitz's first interference two weeks earlier.

To state a claim for retaliation under the First Amendment, a plaintiff must identify (1) the constitutionally protected activity in which he was engaged; (2) one or more retaliatory actions taken by the defendant that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that the plaintiff's protected activity was one of the reasons defendant took action against him. Bridges v. Gilbert, 557 F.3d 541, 556 (7th Cir. 2009). After considering plaintiff's expanded allegations about Marwitz's alleged retaliation, I conclude that he has not stated a retaliation claim against Marwitz.

Plaintiff alleges that Marwitz opened the second envelope without any justifiable reason for doing so. Marwitz resealed the envelope with heavy packing tape and placed a metered postage stamp with the original requested postage amount, but the envelope was returned to plaintiff for having insufficient postage, because the packing tape applied by Marwitz made the package too heavy. These allegations fail to state a claim. They do not

show or even suggest that Marwitz's actions would deter a person of "ordinary firmness" from mailing items in the future. The right to send and receive mail does not preclude officials from reviewing or censoring inmate mail. Wolff v. McDonnell, 418 U.S. 539, 575-76 (1974); Rowe v. Shake, 196 F.3d 778, 782 (7th Cir. 1999). Plaintiff says that Marwitz "stole" his mail, but at worst, Marwitz contributed to a short delay by re-taping the package with the result that it was too heavy for the original postage; he did not destroy the package or otherwise prevent the package from being mailed after it was returned to plaintiff. This short delay can hardly be seen as an event that would deter a person of ordinary firmness from mailing in the future. Plaintiff's clarification of the time line and his submission of additional information about the circumstances of the interference does not persuade me that it was an error to conclude that Marwitz's "isolated instances of mail disruption or theft" did not arise to a constitutional violation. Dkt. #4 (citing Rowe v. Shake, 196 F.3d at 782; Sizemore v. Williford, 829 F.2d 608, 610-11 (7th Cir. 1987)). Accordingly, I will dismiss this case for plaintiff's failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

1. Plaintiff Thomas Zach is DENIED leave to proceed on his claims that any of the defendants named in this lawsuit violated his First Amendment rights with regard to interfering with his mail or subsequently retaliating against him.
2. The case is DISMISSED for plaintiff's failure to state a claim upon which relief may

be granted. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 14th day of May, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge