

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2264

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ALLEN J. THOMAS,

Petitioner-Appellant,

v.

KENNETH N. JOHNSON,

Respondent,

**RONALD W. KRUEGER,
MICHAEL J. RATKOVICH,
LYNN GEIGER,
ROBERT B. TOM
and JODY R. SIMON,**

Respondents-Respondents.

APPEAL from an order of the circuit court for Lincoln County:
ROBERT A. KENNEDY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Allen Thomas, an inmate in the Wisconsin State Prisons, appeals a trial court order that dismissed his 42 U.S.C. §§ 1983 and 1985 lawsuit against Lincoln County jail officials and their superior, the Lincoln County sheriff. During Thomas' stay in the jail, jail officials searched his cell and confiscated papers after they learned of a plot by other inmates for violence against a judge. These papers included letters to Thomas' lawyer and an inculpatory letter Thomas was writing his sister. Except for the latter, his papers were later returned.

The trial court dismissed Thomas' complaint on the basis of the arguments raised in the sheriff's trial court brief, without specifying the exact basis of its decision. On appeal, Thomas argues that his allegations about the search and confiscation stated a valid § 1983 claim and a valid § 1985 claim for conspiracy to deprive him of his constitutional rights. We have reviewed Thomas' complaint and reject his arguments. We therefore affirm the trial court's order.

We have previously reviewed Thomas' complaint in another appeal involving his civil rights suit against the district attorney; the complaint itself appears only in that record. *Thomas v. Johnson*, No. 95-1002, slip op. (Wis. Ct. App. Nov. 28, 1995). In that decision, we noted that jail officials could conduct warrantless routine cell searches for jail security and could review mail that did not immediately reveal its privileged status to the reader. *See, e.g., Hudson v. Palmer*, 468 U.S. 517, 525-30 (1984); *Wolff v. McDonnell*, 418 U.S. 539, 574-77(1974); *Smith v. Shimp*, 562 F.2d 423, 426-27 (7th Cir. 1977). Our conclusion remains the same.

Read fairly, Thomas' complaint depicted a routine security search and made no claim that any privilege was immediately self-evident to a reader. The letter to his sister that the State kept was not privileged. Further, we doubt that the constitution bars jail officials from reviewing even self-evidently privileged mail if they learn of plans for violence by inmates. Thomas therefore had no basis to sue jailers either for a § 1983 violation or for a § 1985 conspiracy to deprive him of his constitutional rights. For the same reasons, Thomas had no legal basis to hold the sheriff responsible for the search and confiscation.

In addition, even if the jailers had violated Thomas' civil rights, the sheriff had no vicarious liability for the subordinates' actions. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). The sheriff is liable only for his own actions, policies, or indifference to subordinates' violations. *See id.* Thomas did not claim that the subordinates acted pursuant to the sheriff's directions or policies or that the sheriff knew of and was indifferent to the subordinates' actions. In sum, the trial court correctly dismissed Thomas' complaint.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.