

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KENDALL TRENT BROWN,

Plaintiff,

vs.

CIVIL ACTION
No. 07-3062-SAC

SALINE COUNTY JAIL, et al.,

Defendants.

ORDER

Plaintiff, a prisoner confined in the Saline County Detention Center in Salina, Kansas, proceeds pro se and in forma pauperis on a civil complaint filed under 42 U.S.C. § 1983.

In his complaint, plaintiff broadly alleges jail staff is mishandling his legal mail and engaging in postal fraud. Plaintiff claims that jail staff interferes with his possession, receipt, and sending of legal mail, all in an attempt to prevent plaintiff from pursuing relief on legal claims. Plaintiff cites various problems with the handling and forwarding of his mail during his temporary confinement at a state mental facility, and in his attempts to correspond with governmental agencies. Plaintiff broadly alleges "unfair discrimination" and seeks damages from the Saline County Jail, the Saline County Sheriff, and a Saline County Officer who handles prisoner mail.

By an order dated November 16, 2007, the court directed plaintiff to show cause why the complaint, as supplemented by plaintiff's later filings, should not be summarily dismissed as

stating no claim for relief because the jail itself was not a proper defendant, and because plaintiff's allegations against the remaining defendants failed to state a claim upon which relief can be granted under 42 U.S.C. § 1983.

In response plaintiff filed additional supplemental documents, citing his limited education and asking again for appointment of counsel.¹ The court denies this request.

Plaintiff also submitted a new form complaint, which the court treats as plaintiff's amended complaint. See Fed.R.Civ.P. 15(a) (plaintiff may amend his complaint "once as a matter of course" prior to defendants filing their response to the complaint). The amended complaint no longer names the Saline County Jail as a defendant in his amended complaint, thus the pleading is treated as encompassing plaintiff's voluntary dismissal of the Saline County Jail as a defendant.

The remaining two defendants in this action are Saline County Sheriff Glen Kochanowski, and Officer Nalls who plaintiff identifies as the "mail lady" at the Saline County jail. Plaintiff states the sheriff is responsible for jail regulations, including current

¹Plaintiff also requests that if his case is dismissed, that he be allowed to appeal to the United States Supreme Court. Plaintiff is advised that a timely notice of appeal from the final order and judgment entered in this matter must be filed in this court, see Fed.R.App.P. 4, and that the Tenth Circuit Court of Appeals will have jurisdiction over such an appeal. Plaintiff is further advised that there is a \$455.00 fee to file an appeal. If plaintiff is granted leave to proceed in forma pauperis on appeal without prepayment of that appellate filing fee, plaintiff will be required to pay the full \$455.00 fee as provided by 28 U.S.C. § 1915(b)(1) and (2).

regulations dated January 2008 which provide for cursory inspection of outgoing legal mail if jail staff suspects the mail is not legal mail. Plaintiff further states his belief that his outgoing legal mail is not being delivered.

Inmates have a limited constitutional right to send and receive mail which may be restricted for legitimate penological interests. See Thornburgh v. Abbott, 490 U.S. 401, 407 (1989); Procunier v. Martinez, 416 U.S. 396, 413-14 (1974). In the amended complaint, plaintiff alleges interference in his access to the court, but points only to the fact that he received no response to two recent requests to the Kansas appellate courts for assistance in filing a disciplinary complaint against his attorney. This is insufficient for reasonable finders of fact to conclude that plaintiff's mail was not in fact sent out of the facility. Also, plaintiff's attempt to lodge a disciplinary complaint against his criminal defense attorney is not within his protected right of access to the courts. See Wolff v. McDonnell, 418 U.S. 539, 576 (1974).

Having carefully reviewed plaintiff's numerous submissions concerning jail regulations and instances of plaintiff's mail being allegedly mishandled, the court finds plaintiff has not demonstrated any actual prejudice in his ability to pursue a nonfrivolous legal claim. See Lewis v. Casey, 518 U.S. 343, 351 (1996). Additionally, plaintiff's prayer in his amended complaint for damages for depression and emotional distress resulting from the jail's alleged unlawful practices is not supported by any showing of a prior physical injury. See 42 U.S.C. § 1997e(e) ("No Federal civil action

may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury").

Accordingly, for the reasons stated herein and in the order entered on November 16, 2007, the court concludes the complaint as supplemented and amended should be dismissed as stating no cognizable constitutional claim upon which relief can be granted under 42 U.S.C. § 1983. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that...the action...fails to state a claim on which relief may be granted").

IT IS THEREFORE ORDERED that the complaint as supplemented and amended is dismissed as stating no claim for relief.

IT IS SO ORDERED.

DATED: This 23rd day of May 2008 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge