

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NORMAL ALBERT
PARADA,

Plaintiff,

v.

CASE NO. 07-3132-SAC

J. SHIELDS,

Defendant.

O R D E R

This civil rights complaint, 42 U.S.C. 1983, was filed by an inmate of the Leavenworth Correctional Center, Leavenworth, Kansas (LCC). Plaintiff claims defendants violated his rights under the First and Fourteenth Amendments, the due process clause, and of access to the courts based upon his allegations that on March 4, 2007, he sent an outgoing letter to his attorney in Topeka marked "legal mail," which he received back over 40 days later with the envelope opened. He seeks declaratory, injunctive, and monetary relief.

On June 5, 2007, this court entered a Memorandum and Order finding plaintiff had not provided the certified copy of his inmate account required by statute in support of his Motion for Leave to Proceed in forma pauperis (ifp motion), and giving him thirty days to submit the requisite documentation. Plaintiff was informed that if he failed to submit the documentation or the filing fee within the time prescribed, this action could be dismissed without further notice. The court also discussed plaintiff's claims and the

relevant legal authority holding that an isolated instance of opening inmate legal mail outside of the inmate's presence, without more, does not violate the Constitution. See Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990)(isolated incident of opening inmate legal mail "without evidence of improper motive or resulting interference with the inmate's right to counsel or to access the courts, does not give rise to a constitutional violation"). Plaintiff was given time to show cause why this action should not be dismissed for failure to state a claim of federal constitutional violation.

The time allotted for plaintiff to comply with the court's prior Memorandum and Order has passed, and plaintiff has neither submitted a certified copy of his inmate account in support of his ifp motion, nor paid the filing fee herein. The court concludes that plaintiff's ifp motion must be denied, and this action should be dismissed for failure to satisfy the filing fee.

Plaintiff has filed a response (Doc. 7) in which he basically asserts that he set out the necessary facts in his pleadings. The court finds plaintiff's response does not provide additional factual allegations indicating the interference with his legal mail was more than an isolated incident, improper motive, or that the incident actually hindered his efforts to pursue a legal claim. The court concludes plaintiff has failed to state facts in support of his federal constitutional claims.

IT IS THEREFORE ORDERED that plaintiff's Motion for Leave to Proceed in forma pauperis (Doc. 2) is denied on account of his

failure to provide documents in support as required by 28 U.S.C. 1915(a)(2).

IT IS FURTHER ORDERED that this action is dismissed and all relief is denied for failure to satisfy the filing fee, and for the reasons stated herein and in the court's Memorandum and Order entered on June 5, 2007.

IT IS FURTHER ORDERED that plaintiff's Motion to Appoint Counsel (Doc. 6) is denied as moot.

IT IS SO ORDERED.

Dated this 18th day of July, 2007, at Topeka, Kansas.

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