

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MANUEL SALCIDO-CORRAL,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3092-SAC

LARRY HOSHAW, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983 by a prisoner in state custody. By an order entered on June 16, 2011, the court assessed an initial partial filing fee and directed plaintiff to show cause on or before July 18, 2011, why this matter should not be dismissed for failure to state a claim upon which relief may be granted. Plaintiff was advised the failure to file a timely response might result in the dismissal of this matter without additional prior notice.

Plaintiff submitted the initial partial filing fee as directed, and the court grants leave to proceed in forma

pauperis.¹

Plaintiff has filed no response to the court's order to show cause, and the court concludes his claims of discrimination and difficulty in placing telephone calls are insufficient to state a claim for relief.

As stated in the court's earlier order, plaintiff's transfer between living areas does not violate a protected right, because a prisoner has no protected interest in avoiding a transfer to more restrictive conditions. *See Hewitt v. Helms*, 459 U.S. 460, 468 (1982)(transfer to such conditions for nonpunitive reasons is within the ordinary course of confinement).

Likewise, plaintiff's difficulty with using the telephone to place collect calls appears to arise from the telephone provider used by his family. Prison authorities advised him on

1

Plaintiff is advised that he remains obligated to pay the balance of the statutory filing fee of \$350.00 in this action. The Finance Office of the facility where he is incarcerated will be directed by a copy of this order to collect from plaintiff's account and pay to the clerk of the court twenty percent (20%) of the prior month's income each time the amount in plaintiff's account exceeds ten dollars (\$10.00) until the filing fee has been paid in full. Plaintiff is directed to cooperate fully with his custodian in authorizing disbursements to satisfy the filing fee, including providing any written authorization required by the custodian or any future custodian to disburse funds from his account.

how to resolve the situation, and plaintiff has not alleged any interference or other action by authorities that might arguably implicate his protected rights. *See Robinson v. Gunja*, 92 Fed. Appx. 624, 627-28 (10th Cir. 2004)(prison administrators determine nature of telephone service available to inmates, subject to review for unreasonable limits).

Having considered the record, the court concludes this matter may be dismissed for failure to state a claim for relief.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted. Collection action shall continue pursuant to 28 U.S.C. §1915(b)(2) until plaintiff satisfies the filing fee.

IT IS FURTHER ORDERED this matter is dismissed for failure to state a claim upon which relief may be granted.

Copies of this order shall be transmitted to the plaintiff and to the Finance Office of the facility where he is incarcerated.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 26th day of July, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge