

2003 WL 23167276

Only the Westlaw citation is currently available.
United States District Court,
W.D. Wisconsin.

Nathaniel Allen LINDELL, Plaintiff,
v.

Matthew J. FRANK, Secretary of the Wisconsin Department of Corrections, Jon E. Litscher, former Secretary of the Wisconsin Department of Corrections; Cindy O'Donnell, Deputy Secretary to Litscher; John Ray, Corrections Complaint Examiner ("C.C.E."); Gerald Berge, Warden at Supermax Correctional Institution; Peter Huibregtse, Deputy Warden of Supermax; Lieutenant Julie Biggar, a Lt. at Supermax; Ellen Ray, I.C.E.; Sgt. Jantzen; C.O. Wetter; C.O. S. Grondin; C.O. Mueller; C.O. Clark, all guards at Supermax; John Sharpe, Manager Foxtrot Unit at Supermax, Defendants.

No. 02-C-21-C. | Dec. 31, 2003.

Attorneys and Law Firms

Nathaniel Lindell, pro se, for Plaintiff.

Jody J. Schmelzer, Assistant Attorney General, Madison, WI, for Defendants.

Opinion

ORDER

CRABB, J.

*1 On May 5, 2003, I granted plaintiff summary judgment on his claim that defendants were violating his First Amendment rights by enforcing a "publishers only rule" that prohibited inmates from receiving any and all newspaper and magazine clippings and photocopies in the mail from any source other than a publisher or recognized commercial source. In the order, I made it clear that defendants were not prohibited from crafting rules or regulations limiting the quantity of such materials that inmates may receive in incoming correspondence. In an order dated May 30, 2003, denying defendants' Rule 59 motion, I explained that although I had ruled that the denial of newspaper and magazine clippings and photocopies *pursuant to the publisher's only rule* violated the First Amendment, this case did not raise the question whether it would violate the Constitution if defendants withheld newspaper and magazine clippings or

photocopies from prisoners for legitimate penological reasons.

Now plaintiff has filed a motion to find defendants in contempt of the May 5 order. In support of his motion, plaintiff avers in an affidavit that he has been informed by an inmate confined in the Green Bay Correctional Institution, an inmate confined at the Columbia Correctional Institution and "other Wisconsin prisoners," including several Wisconsin Secure Program Facility inmates, that their institutions refuse to give them photocopies and internet copies and that they base their refusal on the publisher only rule. However, plaintiff does not aver that *he* has been denied photocopies or clippings on the basis of the publishers only rule. He does not have personal knowledge of the reason other prisoners believe they may have been denied photocopies or clippings. Therefore, his statements are hearsay and not admissible as evidence in support of his contempt motion.

In addition to his own affidavit, plaintiff has submitted the affidavits of Myrtle Morris, a resident of Richland Center, Wisconsin, and LaRon McKinley Bey, an inmate at the Wisconsin Secure Program Facility. In her affidavit, Morris describes the content of a letter that inmate McKinley Bey asked prison officials to send her after the mail room rejected it on the ground that it "taught or advocated violence or threatened the security of the institution." In McKinley Bey's affidavit, McKinley Bey avers that before May 5, 2003, he received "numerous notices of non-delivery of mail" for "primarily religious material" that was photocopied. He states that for a brief time following this court's May 5 order, he was allowed to receive mail from the "alluded sources," including news clippings and photocopied and internet materials. However, in late August, the mail room began again to reject photocopied mail sent to him from religious sources, claiming that the material would cause "physical or mental harm to a person," "teaches or advocates violence" or includes "contraband."

Plaintiff's submissions fall far short of establishing that prison officials are disregarding this court's May 5, 2003 order. As plaintiff is aware, the May 5 order does not require prison officials to give inmates every photocopied paper or news clipping sent to them through the mail. They are permitted to reject such papers so long as there is a legitimate penological reason for doing so. Plaintiff's "evidence" proves nothing more than that he and inmate McKinley Bey are suspicious of the validity of the reasons mail room officials are giving for rejecting certain pieces of mail. It does not show that the rejections were in fact improper under this court's ruling.

ORDER

is DENIED.

*2 IT IS ORDERED that plaintiff Lindell's motion to find defendants in contempt of this court's May 5, 2003, order