

IN THE COURT OF APPEALS OF IOWA

No. 7-365 / 96-1385

000243

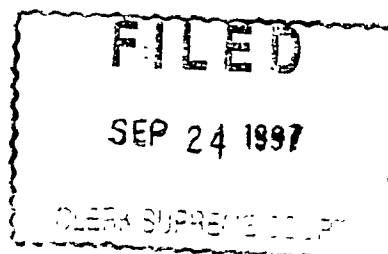
**THOMAS O'CONNELL,**

Plaintiff-Appellant,

vs.

**CRISPUS NIX, et al.,**

Defendants-Appellees.



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Appeal from the Iowa District Court for North Lee County, William L. Dowell, Judge.

Thomas O'Connell, an inmate at the Clarinda Correctional Facility, appeals a district court ruling granting the State's motion for summary judgment on O'Connell's petition under 42 U.S.C. section 1983 for alleged violations of his constitutional rights. **AFFIRMED.**

Thomas O'Connell, Clarinda, pro se, appellant.

Thomas J. Miller, Attorney General, and Layne M. Lindebak, Assistant Attorney General, for appellees.

Considered by Cady, P.J., and Huitink, J., and McCartney, S.J.\*

\* Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

**McCARTNEY, S.J.**

Thomas O'Connell, a former inmate of the Iowa State Penitentiary (ISP) now serving time at the Clarinda Correctional Facility, appeals from a grant of summary judgment in his section 1983 action against ISP officials. O'Connell alleged certain ISP officials violated his constitutional rights under color of state law. The district court granted summary judgment for the officials, finding no genuine issue of material fact existed and defendants were entitled to judgment as a matter of law.

We affirm.

In his petition, O'Connell alleged former warden Crispus Nix informed the Legislative Information Office that inmates were not allowed to contact that office directly, which frustrated O'Connell's attempts to obtain information. O'Connell also alleged Nix failed to provide him with basic necessities or with sufficient idle pay with which to purchase the items himself. O'Connell alleged these conditions were ongoing and violated a lengthy list of constitutional protections.

O'Connell filed grievances raising these claimed violations. He alleged one official ~~denied~~ his grievances access to the grievance system and by doing so perpetuated the underlying violations. He alleged other officials, by not resolving the grievances in his favor, perpetuated the violations and were liable for offending the same lengthy list of constitutional protections.

The issue preserved for review is whether the district court properly entered summary judgment for the ISP officials on the following claims: (1) whether the policy regarding the Legislative Information Office violates the First Amendment; (2) whether O'Connell was denied basic necessities rising to the level of a violation of the Eighth Amendment; and (3) whether O'Connell was denied access to the courts. Our resolution of these issues defeats O'Connell's claims involving the grievance system.

We will uphold a grant of summary judgment when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996). We must determine whether a genuine issue of material fact exists and whether the district court correctly applied the law. *Schuver v. E.I. Du Pont de Nemours & Co.*, 546 N.W.2d 610, 612 (Iowa 1996).

O'Connell alleges that funneling requests for information from the Legislative Information Office through the prison library violates his First Amendment rights. No genuine issue of material fact exists on this issue. Inmates may not contact the Legislative Information Office directly, but may make requests through the library, which will then obtain the materials and make them available to the inmates. O'Connell has made extensive requests for legislation and other materials. The Legislative Information Office has attempted to comply with his requests, and he has

not shown ISP officials caused the Legislative Information Office not to provide him with information.

“[P]rison officials have broad administrative and discretionary authority over the prisons they manage [while] incarcerated persons retain only a narrow range of protected liberty interests.” *Hewitt v. Helms*, 459 U.S. 460, 467, 103 S. Ct. 864, 869, 74 L. Ed. 2d 675, 685 (1983). Imprisonment carries with it the loss of many significant rights. *Hudson v. Palmer*, 468 U.S. 517, 524, 104 S. Ct. 3194, 3199, 82 L. Ed. 2d 393, 401 (1984). Although some instances of censorship would raise grave First Amendment concern outside the prison context, *Thornburgh v. Abbott*, 490 U.S. 401, 407, 109 S. Ct. 1874, 1878, 104 L. Ed. 2d 459, 469 (1989), regulations affecting First Amendment rights inside prison are valid if “reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987).

The policy providing the manner through which inmates may receive materials from the Legislative Information Office is reasonable under *Turner*. Prisons have an interest in monitoring incoming mail to maintain security, order, and rehabilitation. *Procunier v. Martinez*, 416 U.S. 396, 414, 94 S. Ct. 1800, 1811-12, 40 L. Ed. 2d 224, 240 (1974). Funneling requests through the prison library will reduce multiple requests for identical material and reduce postage and other costs. The policy does not prevent inmates from receiving information from the Legislative Information Office, but only affects the procedure an inmate must use.

O'Connell alleges he was deprived of basic necessities and the deprivation amounted to cruel and unusual punishment. To prevail on a claim under the Eighth Amendment, O'Connell had to show an objective and sufficiently serious deprivation that results in the denial of the minimal civilized measure of life's necessities. *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 1977, 128 L. Ed. 2d 811, 823 (1994). O'Connell must also show officials responsible for any deprivation had sufficiently culpable states of mind. *Id.*

Even if O'Connell's factual allegations are accepted as true, they do not satisfy either the objectively serious deprivation or the culpability requirement. O'Connell alleged only that he was not provided with a second pair of winter underwear when his pair was being laundered, not that he suffered as a result. The requirement that he use his own funds to purchase grooming articles did not prevent him from purchasing them and thus no Eighth Amendment violation occurred.

O'Connell alleges the amount of idle pay he receives -- \$6.70 received each month regardless of whether or not he works a job -- is inadequate to purchase paper, postage, and other supplies necessary to draft and file legal documents. He alleges the inadequate pay violates his right to access the courts.

The idle pay policy is facially valid. *Blaise v. Fenn*, 48 F.3d 337, 339 (8th Cir. 1995). O'Connell has not shown his efforts to pursue a legal claim were hindered, which he must establish to prevail on his claim. *Lewis v. Casey*, 518 U.S. \_\_\_, \_\_\_,

116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 616-17 (1996). In fact, the evidence suggests the opposite.

O'Connell premises his challenge to the ISP grievance system and the resolution of his grievances on the alleged violations discussed above. Because we have held summary judgment for defendants was proper on these claims, O'Connell cannot prevail on his claim the grievance process perpetuated constitutional wrongs.

No genuine issues of material fact exist. O'Connell's stock and conclusory statements of "this is disputed" do not suffice to meet his burden of showing specific facts constituting competent evidence in support of his claims. *See Winkel v. Erpelding*, 526 N.W.2d 316, 318 (Iowa 1995). O'Connell's claim the district court erred by entering summary judgment when a motion to compel was outstanding is waived for failure to raise this issue in district court. *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995).

**AFFIRMED.**