DOCKET NO. CV24-5001636	STATE OF CONNECTICUT SUPERIOR COURT G.A. 19	SUPERIOR COURT
CHRISTOPHER PETTEWAY	:	
	2024 APR 23 P 12: 38	JUDICIAL DISTRICT OF TOLLAND
V.	:	
	:	
	:	
COMMISSIONER OF CORRECTION	:	APRIL 23, 2024

MEMORANDUM OF DECISION ON MOTION TO DISMISS

Christopher Petteway, the petitioner, initiated this matter with a pro se petition for a writ of habeas corpus filed on November 29, 2023. In that petition, he alleges a deprivation of his due process rights associated with various disciplinary tickets. The respondent filed a motion to dismiss on the basis that Petteway has not implicated a liberty interest in his complaint. After a hearing, and for the reasons articulated more fully below, the petition must be dismissed.

I. LEGAL STANDARD

Pursuant to Practice Book § 23-29 (1) and (2) this court "may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that: (1) the court lacks jurisdiction; (2) the petition, or a count thereof, fails to state a claim upon which habeas corpus relief can be granted."

"It is well established that, when a habeas court considers a motion to dismiss a petition for a writ of habeas corpus, '[t]he evidence offered by the [petitioner] is to be taken as true and interpreted in the light most favorable to [the petitioner], and every reasonable inference is to be drawn in [the petitioner's] favor.' (Internal quotation marks omitted.) Ham v. Commissioner of Correction, 152 Conn. App. 212, 223–24, 98 A.2d 81, cert. denied, 314 Conn. 932, 102 A.3d 83 (2014); see also Orcutt v. Commissioner of Correction, 284 Conn. 724, 739, 937 A.2d 656 (2007). It is equally well settled that '[t]he petition for a writ of habeas corpus is essentially a pleading and, as such, it should conform generally to a complaint in a civil action ... [and it] is fundamental in our law

that the right of a plaintiff to recover is limited to the allegations of his complaint.' (Internal quotation marks omitted.) Thiersaint v. Commissioner of Correction, 316 Conn. 89, 125, 111 A.3d 829 (2015). Thus, '[w]hile the habeas court has considerable discretion to frame a remedy that is commensurate with the scope of the established constitutional violations ... it does not have the discretion to look beyond the pleadings ... to decide claims not raised.... The purpose of the [petition] is to put the [respondent] on notice of the claims made, to limit the issues to be decided, and to prevent surprise.' (Internal quotation marks omitted.)" Nelson v. Commissioner of Correction, 326 Conn. 772, 780–81, 167 A.3d 952 (2017), citing and quoting Newland v. Commissioner of Correction, 322 Conn. 664, 678, 142 A.3d 1095 (2016).

In order to state a claim for a denial of procedural due process an incarcerated individual "must allege that he possessed a protected liberty interest, and was not afforded the requisite process before being deprived of that liberty interest." (Citation omitted.) Anthony A. v. Commissioner of Correction, 326 Conn. 668, 674, 166 A.3d 614 (2017). Thus, in order for the habeas court to have jurisdiction, the individual must demonstrate the deprivation of a liberty interest. Id; Perez v. Commissioner of Correction, 326 Conn. 357, 163 A.3d 597 (2017). "To constitute a deprivation of liberty, a restraint must have imposed an atypical and significant hardship ... in relation to the ordinary incidents of prison life.... Additionally, the [incarcerated individual] must establish that the state has granted its inmates, by regulation or by statute, a protected liberty interest in remaining free from that confinement or restraint." (Citation omitted.) Townsend v. Sterling, 157 Conn. App. 708, 718, 116 A.3d 873 (2015). In order "to establish a liberty interest in avoiding administrative segregation, the petitioner was required to prove that state regulations required a hearing before he could be placed in administrative segregation and that the conditions of his confinement at Northern imposed an atypical and significant hardship in relation to the ordinary incidents of prison life." Vandever v. Commissioner of Correction, 315 Conn. 231, 242, 106 A.3d 266 (2014). In Sandin

v. Conner, 515 U.S. 472, 485-86, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995), the United States Supreme Court held that thirty days "in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest." See Alvarez v. Commissioner of Correction, Superior Court, judicial district of Hartford, Docket Number HHD-CV-09-5033486-S (March 18, 2014, *Schuman, J.*) (no liberty interest where sanctions are fifteen days in punitive segregation, thirty days loss of recreation privileges, and sixty days loss of commissary privilege).

II. DISCUSSION

Petteway claims that DOC is violating his rights by repeatedly placing him in segregation, denying him access to his legal materials while in segregation, limiting his legal calls to two a month, sometimes delaying his legal mail by 2-3 weeks, denying his grievances, freezing his incoming and outgoing non-privileged mail and generally interfering with his due process rights and his access to courts.

Our caselaw is clear that individuals have no liberty interest in not being placed in punitive segregation or losing commissary privileges or social correspondence. Joyce v. Commissioner of Correction, 129 Conn. App. 37, 43, 19 A.3d 204 (2011) (no liberty interest in thirty days of punitive segregation absent loss of good time credits). Nor is there a liberty interest in access to visitors. Santiago v. Commissioner of Correction, 39 Conn. App. 674, 680, 667 A.2d 304 (1995). None of the sanctions imposed for any of his disciplinary tickets include punitive segregation approaching the thirty days at issue in Sandin. He has not alleged a cognizable liberty interest as it pertains to punitive segregation, visits and personal, non-privileged phone calls.

As to the denial of access to courts by virtue of allegedly delayed mail and limited legal calls, this could state a claim upon which relief can be granted. "In Lewis v. Casey, 518 U.S. 343 (1996), the Supreme Court clarified what is encompassed in an inmate's right of access to the courts and

what constitutes standing to bring a claim for the violation of that right. The Court held that, to show that the defendants violated his right of access to the courts, an inmate must allege facts demonstrating an actual injury stemming from the defendants' unconstitutional conduct. As an illustration, the Court noted that if an inmate were able to show that, as a result of the defendant's action, he was unable to file an initial complaint or petition, or that the complaint he filed was so technically deficient that it was dismissed without a consideration of the merits of the claim, he could state a claim for denial of access to the courts. The Court, however, specifically disclaimed any requirement that prison officials ensure that inmates have sufficient resources to discover grievances or litigate effectively once their claims are brought before the court. The actual injury described above, cannot derive from 'just any type of frustrated legal claim.' Inmates must be afforded access to court to file a direct appeal, a petition for writ of habeas corpus or a civil rights action challenging the denial of a basic constitutional right. The inability to file or prosecute actions other than direct or collateral attacks on their sentences or a challenge to their conditions of confinement "is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." (Citations omitted.) Varszegi v. Strom, No. 3:03CV1195 (EBB), 2007 WL 9718929, at *7 (D. Conn. Mar. 23, 2007), aff'd, 324 F. App'x 85 (2d Cir. 2009). "Mere delay in being able to work on one's legal action or communicate with the courts does not rise to the level of a constitutional violation." (Citation omitted.) Wine v. Mulligan, 213 Conn. App. 298, 305, 277 A.3d 912 (2022).

Petteway has not alleged any facts that give rise to a cognizable legal claim here. Petteway has numerous pending habeas corpus petitions and routinely files motions and objections with the court, without any seeming restriction on his ability to do so. He has not demonstrated in any way that his right of access to courts has been limited. At the hearing on the motion to dismiss, he acknowledges that DOC policies provide all incarcerated individuals two legal phone calls a month.

He argues that because of the sheer volume of cases he has pending, he should be permitted more calls. This does not state a claim for interference with access to courts.

One final consequence of this disciplinary tickets is the forfeiture of risk reduction earned credit. Ordinarily, this would give rise to a liberty interest, however, Petteway is ineligible to earn risk reduction earned credits due to his offense of conviction and therefore, none have actually been forfeited.

III. CONCLUSION

Since Petteway has not asserted a cognizable liberty interest, the motion to dismiss is granted. Judgment shall enter dismissing the petition for a writ of habeas corpus.

Bhatt, J.

Copies sent to:
Christopher Petteway w/pet'r lapfew - by mail
Attorney Jacob McChesney - by JDVU
Judge Bhatt
by: Kathryn Stacpole, First Asst. Clerk
4/23/2024