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United States District Court, D. New Jersey.

Ronald E. LONG, Sr., Pro Se, Plaintiff,  
v.  
Howard BEYER, Mel Williams, Douglas Heil, and  
Mildred Stribling, Defendants.

Civ. A. No. 87-1301 (AET). | August 11, 1987.

#### Attorneys and Law Firms

Ronald E. Long Sr., pro se.

George W. Gregory, DAG, Trenton, N.J. for defendants.

#### Opinion

### MEMORANDUM AND ORDER

ANNE E. THOMPSON, District Judge.

\*1 This matter comes before the court on a motion by the plaintiff Ronald E. Long, *pro se*, for a preliminary injunction and a cross-motion by the defendants Howard Beyer, Mel Williams, Douglas Heil and Mildred Stribling for summary judgment. Plaintiff has filed this complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that the defendants have denied him adequate access to the courts by denying him access to the prison law library. Plaintiff alleges that his requests for materials are not honored or are only responded to after significant delays, that he is denied legal materials because he is a Capital Sentences Unit (CSU) inmate, and that there are long delays when he requests that copies of legal documents be made. Plaintiff seeks permanent relief in the form of a declaratory judgment that the present procedure for legal access for CSU inmates is unconstitutional and a permanent injunction permitting him physical access to the law library. Plaintiff now moves for a preliminary injunction allowing him to physically use the library for ten hours a week and to confer with another inmate with whom he has filed a joint lawsuit.

The court will first address the defendants' motion for summary judgment. Defendants maintain that since no genuine issue of fact exists in this case, they are entitled to summary judgment as a matter of law. Defendants argue that the fact that Ms. Stribling, who has had some paralegal training, is assigned to assist CSU inmates with legal services and materials satisfies the requirements of

Bounds v. Smith, 430 U.S. 817 (1977). Defendants further argue that plaintiff has not demonstrated an actual injury.

The court finds that a genuine issue of material fact exists concerning the legal access provided to Mr. Long. While Bounds does not specify how well-trained the individual providing legal assistance must be and how much assistance she must provide, it does demand that prisons 'assure all prisoners meaningful access to the courts.' Id., at 824 (emphasis added). The Supreme Court went on to say in Bounds 'the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.' Id. at 828. Plaintiff's complaint and subsequent filings certainly raise a question as to whether the legal assistance provided to the plaintiff is sufficient under Bounds. The court is particularly troubled by the statement made in Ms. Stribling's affidavit (Defendants' Appendix p. 16) that when a CSU inmate's requests do not contain sufficiently specific information to locate the particular materials sought she returns the request form to the inmate for further information. Apparently if the inmate cannot provide additional information the search then ends. It is difficult to imagine how an inmate isolated in the Capital Sentences Unit would be able to provide the prison legal services assistant with additional information in the form of more specific citations from his cell. If the legal assistant's job does not provide for her to do any legal research for the inmates, then the inmates should have on-going access to materials such as federal digests, United States Law Week and the United States Code Annotated where they can locate the names and citations for those cases relevant to their claims. A service which only supplies a CSU prisoner with that material which, from his cell, he is able to cite to adequately may not satisfy the demands of Bounds. Furthermore, an issue may be presented by the delays alleged by the plaintiff in response to his requests for legal materials. Plaintiff has alleged that, on occasion, the prison library has taken up to 19 days to have legal materials provided to him. The court finds that plaintiff has raised genuine issues of material fact in this case.

\*2 The court also finds that the plaintiff has alleged actual harms. Defendants argue that plaintiff has not alleged an actual injury as he has not shown an instance where he was actually denied access to the court. In Kershner v. Mazurkiewicz, 670 F.2d 440 (3d Cir. 1982), the case was dismissed for failure to state a claim of denial of access, in part, because it was not a case 'in which the state prison system failed to provide adequate legal facilities.' Id. at 444. The complaint in Kershner concerned the provision of legal supplies, such as pads, pens, pencils, etc., and the court found that these allegations did not

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state a claim for actual denial of access to the courts. The Third Circuit specifically differentiated the particular claims in Kerschner from claims that a prison system failed to provide adequate access to a law library as in Bounds. In this instance plaintiff does allege actual harms pursuant to Kerschner. Plaintiff alleges actual denial of legal access as he is denied physical access to the library and does not receive adequate legal assistance in place of library privileges. Plaintiff alleges he is supplied with the wrong cases, incomplete statutes, and, in some instances, is never supplied with the material he has requested. The plaintiff currently has lawsuits pending for which he must file papers, the alleged denial of access prevents Mr. Long from exercising his constitutional rights. Finding that the plaintiff has raised genuine issues of material fact and has alleged actual harm, the court will deny defendants' motion for summary judgment.

Plaintiff has moved for a preliminary injunction giving him actual access to the prison law library and the right to talk to another prisoner, Mr. Gerald, concerning a jointly-filed lawsuit. The court finds that the issue of plaintiff's communications with Mr. Gerald more properly belongs before Judge Gerry, the presiding judge in the jointly-filed lawsuit. The court will not address Mr. Long's request to confer with Mr. Gerald at this time. The court will review Mr. Long's request for actual library access.

In order to obtain injunctive relief, plaintiff must show: (1) that he has a reasonable probability of success on the merits; (2) that he will suffer irreparable harm if an injunction is not granted; (3) that the public interest will not be harmed by an injunction; and (4) that the defendants will not suffer undue harm if an injunction is entered. Klitzman, Klitzman and Gallagher v. Krut, 744 F.2d 955, 958-9 (3d Cir. 1984); Continental Group Inc. v. Amoco Chemical Corp., 614 F.2d 351, 356-7 (3d Cir. 1980). As noted above plaintiff's claims made pursuant to Bounds raise genuine issues of material fact; furthermore, a review of the cases since Bounds indicates that plaintiff has established a sufficient probability of success on the merits to satisfy the first criteria for an injunction. In Toussiant v. McCarthy, 801 F.2d 1080, 1110 (9th Cir. 1986), the court concluded that in order to comply with Bounds prisoners who are denied physical access to law libraries must be provided legal research assistance sufficient to provide meaningful access to the courts. The court specifically noted that a 'paging system' which allows prisoners only to request certain cases or statutes does not provide meaningful access. Id., at 1109. The Fourth Circuit has also found that a paging system did not provide sufficient access to the courts. In Williams v. Leeke, 584 F.2d 1336, 1339 (4th Cir. 1978), cert. denied, 441 U.S. 911 (1979), the court concluded that:

\*3 [s]imply providing a prisoner with books in his cell, if he requests them, gives the prisoner no meaningful

chance to explore the legal remedies he might have. Legal research often requires browsing through various materials in search of inspiration; tentative theories may have to be abandoned in the course of research in the face of unfamiliar adverse precedent. New theories may occur as a result of a chance discovery of an obscure or forgotten case. Certainly a prisoner, unversed in the law and the methods of legal research, will need more time or more assistance than the trained lawyer in exploring his case. It is unrealistic to expect a prisoner to know in advance exactly what materials he needs to consult.

The court in Williams held that the prison was not required to provide additional library access if that would constitute a security risk. Although the paging system alone would not have complied with Bounds, the court found that the combination of the paging system with various state-funded legal assistance programs, including a law student-run prisoner assistance project did provide prisoners adequate legal access.

Most recently in U.S. Ex. Rel. Para-Professional Law Clinic v. Kane, 656 F. Supp. 1099 (E.D. Pa. 1987) the court held that when prisoners are denied physical access to the library, '[t]he prison's program of providing a small number of books and cases upon request does not satisfy the constitutional obligations set forth in Bounds.' Id., at 1104. The court concluded that if restricted prisoners were not provided with physical access on their cell block to trained prisoner paralegals in addition to the provision of books and cases on request from the library their fundamental constitutional rights would be violated. Id. at 1104-5. The trained legal assistance is not, of course, required to take the form of prisoner paralegals as in Para-Professional Law Clinic. It should, however, be noted that the assistance provided by the prisoner paralegals in Para-Professional Law Clinic included preparing letters to the court, filing motions and petitions, doing the research necessary to prepare such papers, and explaining communications from the courts and opposing counsel to the plaintiffs.

The court finds that plaintiff has shown a reasonable probability of success on the merits given the limited access to legal research materials he is currently afforded. Furthermore, the court finds that plaintiff will suffer irreparable harm in that he is not able to file papers and claims in a timely fashion and is, therefore, being deprived of his constitutional rights. The court should note that plaintiff did file a brief in this matter prepared for him by Inmate Legal Assistance (ILA), a prisoner

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paralegal group at Trenton State Prison. As the brief and the attached affidavits indicate, however, Mr. Long is only allowed to communicate with the ILA through prison mail. His communications can, therefore, be read by the defendants. In addition, this brief was only timely filed because the court adjourned the motion to allow Mr. Long the time to prepare a reply and because the ILA has been briefing similar matters in an ongoing case being heard by the Honorable Robert E. Cowen, Valentine v. Beyer, Civ. No. 85-4401. The court finds that the fact that a CSU inmate may, on his own initiative, request through the prison mail that the ILA prepare documents for him is not sufficient to guarantee legal access. Mr. Long has no opportunity to discuss the matter with those preparing the papers nor to provide them with the necessary facts. Furthermore, communication through prison mail is a time-consuming procedure unlikely to enable plaintiff to file timely papers with the court. Finally, this is an arrangement that plaintiff was able to make on his own in this particular instance. Access to the ILA is not part of a program for legal assistance provided to CSU inmates and in this form is not sufficient to show that plaintiff is not suffering irreparable harm. The court further finds that

there is no indication that the defendants will be harmed by a preliminary injunction nor has any evidence been introduced that the public interest will be affected.

\*4 While the court is disposed to issue a preliminary injunction we cannot grant the plaintiff's proposed injunction. Pursuant to Bounds the prison is not required to allow certain prisoners access to a law library that is used by the general prison population. The court will give both Mr. Long and the defendants 45 days to provide the court with proposals to allow CSU inmates meaningful legal access consistent with this opinion.

It is therefore on this 11th day of August, 1987,

ORDERED that defendants' motion for summary judgment is denied; and

ORDERED that plaintiff and defendants have 30 days to submit proposals for a plan which will more adequately provide CSU inmates meaningful legal access.