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DISTRICT IV

November 24, 2021

To:

Hon. Richard G. Niess
Circuit Court Judge
Electronic Notice

Gabe Johnson-Karp
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Mustafa-El K.A. Ajala 223971
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

You are hereby notified that the Court has entered the following opinion and order:

2019AP2330

Mustafa-EL K.A. Ajala v. Jim Schwochert (L.C. 2018CV483)

Before Kloppenburg, Fitzpatrick, and Graham, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mustafa-El K.A. Ajala, formerly known as Dennis Jones, appeals an order in which the circuit court denied his motion for summary judgment and granted summary judgment in favor of the defendants-respondents. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

BACKGROUND

For the time period relevant to this appeal, Ajala was an inmate confined at the Wisconsin Secure Program Facility. The defendants-respondents were, for the relevant time period, employees of the Department of Corrections, and will be referred to collectively as “DOC officials.” On May 21, 2016, a search of Ajala’s cell by certain DOC officials resulted in the seizure of two documents relevant to this appeal. The first document was a letter dated February 13, 2002, written by Ajala to a district attorney in Racine. In the letter, Ajala wrote that another inmate had accused him of being a leader of a gang, the Vice Lords. That allegation was not disputed anywhere in the letter. The second document displayed lyrics for a rap song that Ajala apparently had written years earlier. The lyrics contained praise for the Vice Lords and also referenced the five-point star, which is known to be a symbol used by the Vice Lords.

Ajala received an adult conduct report for possession of the letter and lyrics. The conduct report alleged that Ajala had violated WIS. ADMIN. CODE § DOC 303.24 (September 2014),² which prohibits group resistance and petitions, other than certain stated exceptions not applicable in this case. A disciplinary hearing committee found Ajala guilty of violating WIS. ADMIN. CODE § DOC 303.24, as alleged in the conduct report. The committee ordered a disposition of sixty days of disciplinary separation. The committee’s decision also specified that the lyrics and letter would be retained by staff.

² All references to Chapters DOC 303 and DOC 308 of the Wisconsin Administrative Code are to the September 2014 register date unless otherwise noted.

Ajala appealed the committee's decision to Warden Gary Boughton, who found that the committee had erroneously interpreted the letter that had been seized from Ajala's cell. Boughton reversed the committee's finding of guilt on the conduct report and ordered that the report be expunged from Ajala's record. Ajala was released from disciplinary separation back to the general prison population.

On August 2, 2016, Captain David Gardner recommended that Ajala be placed in administrative confinement on the basis that there was substantial reason to believe that Ajala presented "a threat to the overall security of the institution." Gardner's recommendation followed several assaults between inmates who were members of the Vice Lords and Latin Folk gangs. During an investigation into the assaults, several inmates indicated Ajala held a leadership position with the Vice Lords. There was also evidence that while Ajala was in restrictive housing he attempted to pass his leadership position to another inmate who was in the general population. Following notice and a hearing, the Administrative Confinement Review Committee (ACRC) found that Ajala's presence in the general population posed a substantial risk to institutional security and unanimously confirmed Gardner's recommendation that Ajala remain in administrative confinement. Ajala appealed, and the ACRC's decision was upheld first by the warden and then by the Administrator of the Division of Adult Institutions (DAI).

In January 2017, Ajala was given notice of the required six-month review of his administrative confinement. *See* WIS. ADMIN. CODE § DOC 308.04(10). On February 1, 2017, after notice and a hearing, the ACRC found that continued administrative confinement was necessary for Ajala, based upon his "pattern of negative behavior, noncompliance and continued security threat group activities." Ajala appealed, first to the warden, and then to the DAI Administrator, both of whom affirmed the ACRC's decision.

At the next six-month review, in July 2017, the ACRC again determined that it was necessary to retain Ajala in administrative confinement. Ajala notified Warden Boughton that the ACRC hearing was held a day earlier than it should have been, and Boughton confirmed that there had been a procedural error. A re-hearing was ordered before a different ACRC. The re-hearing took place in September 2017, and the new ACRC recommended that Ajala be retained in administrative confinement. Ajala again appealed to Warden Boughton, who reversed the ACRC's decision, concluding that there was not sufficient evidence of recent gang leadership activity by Ajala to warrant his continued placement in administrative confinement. Boughton directed prison staff to release Ajala back to the general population.

Ajala then filed a complaint in the circuit court, alleging numerous state and federal claims against DOC officials. Ajala's claims included breach of contract, false imprisonment, various tort claims, and constitutional claims. After the complaint was removed to federal court, Ajala voluntarily dismissed the federal claims, and the case was remanded to circuit court. The parties filed cross motions for summary judgment. The circuit court granted the motion of the DOC officials and denied Ajala's motion, dismissing all of his claims for relief. This appeal follows.

DISCUSSION

Ajala presents several issues on appeal. First, he asserts that the circuit court erred in concluding that he was required to exhaust his claims through the certiorari review process prior to filing the instant action. In the respondents' brief, the State appears to concur that Ajala was not required to exhaust his claims through a certiorari proceeding. We need not decide or further

examine this issue because the circuit court's decision provides multiple other grounds for granting summary judgment against Ajala and dismissing each of his claims.

Ajala's remaining arguments on appeal challenge the circuit court's summary judgment ruling as to only two of his claims, false imprisonment and retaliation. For the reasons discussed below, we reject Ajala's arguments and affirm the order of the circuit court.

Ajala argues that the circuit court erred when it entered summary judgment against him on his false imprisonment claim and when it concluded that the DOC officials exercised lawful authority in restraining him in administrative confinement. A plaintiff claiming false imprisonment must establish that the defendant intentionally and unlawfully restrained the physical liberty of the plaintiff. See *Maniaci v. Marquette Univ.*, 50 Wis. 2d 287, 295, 184 N.W.2d 168 (1971). Here, Ajala asserts that DOC officials acted in violation of WIS. ADMIN. CODE § DOC 303.86, which governs recordkeeping related to inmate disciplinary infractions. Ajala asserts that DOC officials were prohibited from considering the lyrics and letter seized from his cell because past disciplinary actions based on those materials were expunged from his inmate case record. Ajala also argues that DOC officials failed to follow the procedures specified in WIS. ADMIN. CODE § DOC 308.04, which governs administrative confinement.

Ajala's reliance on WIS. ADMIN. CODE §§ DOC 308.04 and 303.86 is misplaced. Neither of those code sections, nor any other authority cited in his briefs, negates the authority of the DOC officials to make placement determinations. We will assume, without deciding the issue, that Ajala is correct in his assertion that DOC officials should not have considered the letter and lyrics, and that they failed to follow all of the proper procedures in the administrative confinement process. Nonetheless, nothing in Ajala's briefs establishes that the DOC officials lacked legal

authority to make the determination that administrative confinement was warranted for Ajala. Without establishing that DOC officials lacked lawful authority to place Ajala in administrative confinement, his false imprisonment claim cannot succeed. See *Maniaci*, 50 Wis. 2d at 295-96.

We turn next to Ajala's argument that the circuit court erred when it entered summary judgment against him on his retaliation claim. The circuit court dismissed the retaliation claim on the basis that it was not supported by any admissible evidence and was "perched on undeveloped arguments." On appeal, Ajala again fails to point to any admissible evidence that would support his retaliation claim, relying instead on bare allegations in his complaint. This court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by Wiley v. M.M.N. Laufer Family Ltd. P'ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236 (lack of record citations); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments); WIS. STAT. § 802.08(3) (party on summary judgment may not rest on allegations but shall present evidentiary facts). Ajala failed to support and develop his retaliation claim in the circuit court, and he again fails to support it on appeal. We reject his arguments related to the retaliation claim on that basis.

Therefore,

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals