MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Warren E. Parks,
Appellant-Plaintiff,

v.

Chris Williams, et al.,
Appellees-Defendants.

June 20, 2022

Court of Appeals Case No. 21A-MI-2199

Appeal from the Putnam Superior Court

The Honorable Melinda Jackman-Hanlin, Magistrate

Trial Court Cause No. 67D01-1908-MI-482

Weissmann, Judge.

[1] Warren E. Parks, an inmate at the Putnamville Correctional Facility, sued three prison officials for $1 million in damages. He claimed he was denied access to the prison law library twice, forced once to choose between his daily blood pressure check and attending a religious service, and denied the opportunity to challenge those actions through the prison grievance system. The prison officials (collectively, the State) moved for summary judgment, which the trial court granted. Parks appeals, claiming he deserves a trial because genuine issues of material fact exist. We disagree and affirm.

Facts

[2] Parks filed a "Common Law Civil Rights Claim Complaint" against three Putnamville officials: Corrections Officer Angela Hooker, Library Clerk Sarah Eads, and Grievance Specialist Chris Williams. The complaint alleged that one day, at 8:15 a.m., Officer Hooker insisted that Parks remain in the health care unit for his daily blood pressure appointment rather than leave for his 8:30 a.m. religious service. After he was told he could not reschedule the appointment for later that day, Parks told Officer Hooker that he was leaving for the religious service. Parks's complaint alleged Hooker "violated her oath of office, when she denied Parks [sic] 8th Amendment right to medical care." Appellant's App. Vol. II, p. 4.

[3] The complaint also alleged that Eads denied her oath and Parks's right to access the courts because twice in one month, she allotted times for Parks to access the prison law library that conflicted with his religious services and prison

employment. As to Williams, the complaint alleged he violated 18 U.S.C. § 241 by refusing to allow Parks to file a grievance against Officer Hooker and Eads.

[4] The trial court ordered all dispositive motions filed by July 30, 2021. On that date, the State moved for a 14-day extension of time to file its motion for summary judgment. The trial court granted that motion, and the State timely filed its summary judgment motion August 13, 2021. Challenging that filing as untimely, Parks refused to respond on the merits. The trial court entered summary judgment for the State as to all of Parks's claims. Parks now appeals.

Discussion and Decision

[5] Parks contends summary judgment was improper because the State's motion was tardy and questions of material fact exist as to each of Parks's claims. When reviewing summary judgment rulings, we apply the same standard as the trial court. *Fox v. Barker*, 170 N.E.3d 662, 665 (Ind. Ct. App. 2021). The State, as the moving party, bore the burden of showing there were no genuine issues of material fact and that it was entitled to judgment as a matter of law. *See id.* Summary judgment is improper if the State failed to meet this burden or if Parks established a genuine issue of material fact. *See id.* We construe all factual inferences in Parks's favor and all doubts as to the existence of a material issue against the State. *See id.* at 665-66.

[6] The record is clear that no genuine issue of material fact exists as to any of Parks's claims.[1]

I. Procedural Claim

[7] Parks first claims he was denied due process by the trial court's decision to grant the State's motion for a 14-day extension of time to file its motion for summary judgment. He appears to assert that the trial court needed to conduct a hearing on the motion or extend Parks's period for objection. Parks cites no authority in support of this argument and his analysis is difficult to decipher.[2] He has therefore waived the issue. *See* Ind. Appellate Rule 46(A)(8)(a) (appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning . . . [and] citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on"); *Daniels v. State*, 515 N.E.2d 530 (Ind. 1987) ("Failure to present cogent argument operates as a waiver . . . on appeal").

[8] Waiver notwithstanding, the trial court committed no error in altering its case management order to allow the State more time to file its summary judgment

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[1] The State first asks us to find that Parks waived all of his claims on appeal by filing a brief that does not comply with Indiana Appellate Rule 46(A). We agree that the statement of the facts and statement of the case in Parks' brief are deficient, and his arguments often lack the cogency required by that rule. We nonetheless find his arguments, though unmeritorious, sufficient overall to allow appellate review.

[2] In this argument and others, Parks incorporates "sovereign citizen" ideology, which some courts have viewed as legally frivolous and deserving of summary rejection. *See, e.g.*, *United States v. Benabe*, 654 F.3d 753,767 (7th Cir. 2011). On that basis, the State requests we dismiss all of Parks's claims as frivolous. Because Parks's basic claims may be separated from their sovereign citizen packaging, we decline to do so.

motion. Trial courts have discretion to rule on motions for continuance. *Coleman v. Charles Court, LLC,* 797 N.E.2d 775, 785 (Ind. Ct. App. 2003) (affirming entry of summary judgment where trial court extended deadline for dispositive motions and later extended date for summary judgment hearing). The trial court acted within its discretion when it allowed the State a short extension to file its motion for summary judgment, particularly considering that Indiana Trial Rule 56(B) specifically authorizes a defending party to move for summary judgment "at any time."

II. Substantive Claims

[9] Parks's complaint appeared to seek relief against the State under 42 U.S.C. § 1983, which provides a civil remedy against any person who, acting under color of state law, subjects an American citizen to a deprivation of any rights, privileges, or immunities secured by the United States Constitution or federal law. *See Medley v. Lemmon*, 994 N.E.2d 1177, 1187 (Ind. Ct. App. 2013). A § 1983 plaintiff suing a government employee acting in the employee's individual capacity must prove: (1) the existence of a constitutionally-protected right; (2) deprivation of that right; (3) that the defendant intentionally caused the deprivation; and (4) that the defendant acted under the color of state law." *Id.* We conclude that the State is entitled to summary judgment because Parks's claims are not based on any violation of his constitutional rights.

A. Claims Against Officer Hooker

[10] Parks seems to argue that the State misconstrued his claims against Officer Hooker as a deprivation of medical care when he was really complaining of a violation of his religious freedom under the First Amendment and the Religious Land Use and Institutionalized Persons Act. But Parks did not allege any religious liberties violations in his complaint and cannot raise a new theory of recovery for the first time on appeal. *Johnson v. Parkview Health Systems, Inc.*, 801 N.E.2d 1281, 1288 (Ind. Ct. App. 2004).

[11] Because Parks focuses exclusively on a claim that he did not make, he fails to offer any basis for overturning summary judgment on the Eighth Amendment claim he did make. The undisputed facts establish that Parks, rather than Officer Hooker, caused any lack of medical care on that day. Officer Hooker specifically scheduled Parks for the blood pressure check early in the morning to avoid interfering with Parks's religious service. Parks admits he arrived at 8:15 a.m. for his blood pressure check and that the religious service did not begin until 15 minutes later. The State asserts, and Parks does not specifically refute, that he could have expeditiously received the medical treatment and then attended the service promptly. Parks even alleges that he took the time to sign a refusal of treatment before proceeding to the religious service. Appellant's Br., p. 7. We find no error in the trial court's entry of summary judgment for Officer Hooker.

B. Claims Against Eads

[12] Parks claims a genuine issue of material fact exists as to whether Eads denied him access to the law library and thereby denied his constitutional right of access to the courts. *See* Ind. Const. art. I, § 12 ("All courts shall be open . . . ."); *Griffith v. State*, 59 N.E.3d 947, 952 (Ind. 2016) (quoting *Bounds v. Smith*, 430 U.S. 817, 824 (1977) (noting that the Fourteenth Amendment requires prisons to allow inmates "meaningful access to the courts" either by "providing . . . adequate law libraries or adequate [legal] assistance").

[13] Parks contends Eads admitted denying him access to the library, and the State thus had the burden of proving that the deprivation was motivated by a legitimate penological interest. *See generally O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349-50 (1987) (explanation). Parks maintains the State failed to establish that no genuine issue of material fact existed as to that issue.

[14] The State, on the other hand, argues it is entitled to judgment as a matter of law because Parks has not established either a denial of access to the law library or any injury. The undisputed facts show that Putnamville inmates are allowed to visit the law library twice weekly for a total of four to six hours. Eads tried to accommodate Parks's religious services and job commitments when scheduling his time in the prison law library. Still, in June 2019, one of the library sessions Eads scheduled for Parks conflicted with his religious service, and another conflicted with Parks's prison employment.

[15] The undisputed evidence shows that inmates are excused from their jobs when their jobs conflict with their scheduled use of the law library. In light of that, Parks alleged only one time when Eads' scheduling required Parks to make a choice between attending another commitment—a religious service—or spending his scheduled time in the law library. Even assuming that this one conflict constitutes a denial of law library access, that isolated incident is not sufficient as a matter of law to constitute a denial of access to the courts. Parks does not suggest that he otherwise lacked access to the law library that month. Inmates also were allowed to copy relevant case materials for free and bring them back to their cells when facing certain filing deadlines. Parks cites no authority suggesting that his inability to visit the law library one or two times resulted in a violation of his constitutional right of access to the courts, and we find none. *See Smith v. Shawnee Library System,* 60 F.3d 317, 322 (7th Cir. 1995) (noting that "prison inmates are not constitutionally entitled to unfettered direct access to law libraries").

[16] The State also was entitled to summary judgment because Parks alleged no injury from the alleged lack of access to the law library and to the courts beyond vaguely stating his "non-frivolous brief" was "harmed." App. Vol. II, p. 4. He has never elaborated on that claim. Actual injury—"that is, actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline"—is an essential part of any claim of denied access to the courts. *Lewis v. Casey*, 518 U.S. 343, 348-49 (1996) (cleaned up). Summary judgment for Eads was proper.

C. Claims Against Williams

[17] Parks's final argument attacks the summary judgment for Williams. Parks argues that his grievances against Hooker and Eads, which Williams refused, were not frivolous and thus constituted First Amendment-protected activity. Parks's sparse argument is supported by even more meager authority. Parks cites a single appellate decision but identifies it so incompletely that we cannot locate it. Parks offers no other basis for overturning the judgment for Williams and thus has waived this claim on appeal. See App. R. 46(A)(8)(a); *Daniels*, 515 N.E.2d at 530.

[18] Parks also claims a question of fact exists as to whether Williams violated 18 U.S.C. § 241 by refusing to honor Parks's request for a grievance form. That federal criminal statute prohibits two or more persons from conspiring "to injure, oppress, threaten, or intimidate any person . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . . ." The maximum sentence for that misconduct is life imprisonment. 18 U.S.C. § 241.

[19] The State claims, and Parks does not specifically refute, that Parks has no private right of action against Williams for a violation of 18 U.S.C. § 241. *See generally Chapa v. Adams*, 168 F.3d 1036, 1038 (7th Cir. 1999) (finding no private right of action for violating criminal statute absent specific statutory authorization). But even if such a right existed, Parks has not alleged a

conspiracy between Williams and any other person necessary to invoke 18 U.S.C. § 241.

[20] As no genuine question of material fact exists as to whether Parks's constitutional rights were violated and such a violation is an essential element of his § 1983 action, we affirm the trial court's entry of summary judgment in all respects.

Robb, J., and Pyle, J., concur.