

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

February 14, 2020

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 20-1176	KEVIN L. MARTIN, Plaintiff - Appellant v. CATHLEEN CAPRON, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:20-cv-00028-DRL-MGG Northern District of Indiana, South Bend Division District Judge Damon R. Leichty	

The following is before the court: **DISTRICT COURT OPINION AND ORDER**, filed on February 11, 2020.

On February 11, 2020, the district court entered an order vacating its order dismissing Kevin Martin's complaint as duplicative and dismissing the case as inadvertently filed. The order also directed the clerk to refund any funds collected for the case. Because the underlying district court case has been dismissed as inadvertently filed, and Martin has received the relief sought in his notice of appeal,

IT IS ORDERED that this appeal is **CLOSED**. No filing fees shall be imposed for this appeal.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KEVIN MARTIN,

Plaintiff,

v.

CATHLEEN CAPRON, *et al.*,

Defendants.

CAUSE NO. 3:20-CV-28-DRL-MGG

OPINION AND ORDER

Kevin Martin, a prisoner without a lawyer, has filed an “[o]mnibus motion” (ECF 13) that this court construes as a motion to reconsider pursuant to Federal Rule of Civil Procedure 59. This case was initiated in the Southern District of Indiana, *Martin v. Capron*, 1:20-CV-041-SEB-DML (S.D. Ind. filed January 6, 2020), and then transferred here. The court recently dismissed this case as a malicious duplicate of a case already pending in this district. *Martin v. Capron*, No. 3:19-CV-1018-JD-MGG (N.D. Ind. filed November 6, 2019).

In response to the court’s order of dismissal and assessment of a filing fee, Mr. Martin contends that he did not intend to file the complaint in the Southern District of Indiana at all, that it was submitted electronically in error by law library staff, and that he “would never file two complaints in district court on the same issue.” ECF 13 at 3. His complaint was not dismissed because it was filed in the Southern District; it was dismissed because it was a duplicate of a pending case in this district and it should not have been filed at all. When a complaint is sent to the clerk’s office without a cause number on it, it triggers the opening of a new case.

Mr. Martin has a practice of attaching previously filed documents to amendments. *See Martin v. Capron*, 3:19-CV-1018-JD-MGG (N.D. Ind. amended complaint filed Jan. 21, 2020). This practice causes confusion and likely for the law library too – especially where those documents do not contain

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cause numbers. It is both unnecessary and unhelpful to file copies of documents that have already been filed in that case. Nonetheless, it seems that Mr. Martin may have intended the complaint submitted electronically for filing in the Southern District of Indiana and later transferred here to be an attachment to his amendment submitted electronically for filing the same day in 3:19-CV-1018-JD-MGG, given that he later refiled his amended complaint via mail in that case together with a copy of the complaint. Giving Mr. Martin the benefit of the doubt, the court will vacate its orders assessing a fee and dismissing this case as a malicious duplicate and instead dismiss this case as inadvertently filed without assessing a fee.

For these reasons, the court:

- (1) GRANTS Kevin Martin's omnibus motion to the extent he is seeking reconsideration;
- (2) VACATES the order granting Kevin Martin leave to proceed *in forma pauperis* (ECF 6);
- (3) DIRECTS the clerk to send a copy of this order to each facility that was notified of the need to collect funds pursuant to the order granting leave to proceed *in forma pauperis* and refund any funds collected pursuant to that order to Kevin Martin;
- (4) VACATES the order dismissing this case as a malicious duplicate (ECF 7);
- (5) DISMISSES this case as inadvertently filed; and
- (6) DENIES Kevin Martin's motion to proceed *in forma pauperis* on appeal as MOOT.

SO ORDERED.

February 7, 2020

s/ Damon R. Leichy
Judge, United States District Court

CERTIFIED COUNSELORS STATEMENTS
OF INMATE TRUST FUND ACCOUNT

I, _____ CASEWORKER AT PENDLETON
CORRECTIONAL FACILITY, DO HEREBY CERTIFY THAT
OFFENDER

MARTIN KEVIN DOC # 169789 HAS HAD THE
FOLLOWING SIX-6 MONTH ACTIVITY ON HIS INMATE
TRUST FUND:

- (1) CURRENT MONTHLY BALANCE \$ 0
- (2) CURRENT MONTHLY RECEIPTS \$ 0
- (3) CURRENT MONTHLY EXPENDITURES \$ 0
- (4) AVERAGE MONTHLY DEPOSIT LAST 6 MONTHS \$ 0
- (5) AVERAGE MONTHLY BALANCE LAST 6 MONTHS \$ 0
- (6) MONTHLY STATE PAY AMOUNT \$ 0

I DECLARE UNDER PENALTY OF PERJURY THAT
THE ABOVE INFORMATION IS TRUE AND ACCURATE

DATE 12-3-20

SIGNATURE A. Ross

PRINTED NAME OF CASEWORKER
IN CCH: A. Ross

TFMITRAN
LOC: ISROFFENDER TRUST SYSTEM
TRANSACTION HISTORY INQUIRY12/04/20 6:40:54
USER: ISRB05

OFFENDER NO 169789 NAME: MARTIN KEVIN L

FROM DATE: 12 / 04 / 2019 TO DATE: 12 / 04 / 2020 STATUS: AC HSE UNIT: GH

DOCMT NUMBER	TRAN CODE	DESCRIPTION	TRAN TYPE	POST DATE	BATCH NO.	TRAN AMOUNT	ACCOUNT NUMBER
ENDING BALANCE (END OF MONTH)=						\$0.00	
=====	=====	=====	=====	=====	=====	=====	=====
	OACT		C	09/15/2020	013	\$0.00	169789

PAGE : 0001

TRANSACTION INQUIRY COMPLETE

PF2=DISPLAY TRANSACTIONS PF7=PG/UP PF8=PG/DN *PF9=CLEAR SCREEN* PF10=EXIT

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA

FILED

4:43 pm, Jan 06, 2020

[This form is for prisoners to sue for civil rights violations. NEATLY print in ink (or type) your answers.] U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
Laura A. Briggs, Clerk

Kevin Martin
[You are the PLAINTIFF, print your full name on this line.]

v.
Cathleen Capron
[The DEFENDANT is who you are suing. Put ONE name on this line. List ALL defendants below, including this one.]

Case Number 1:20-cv-00041-SEB-DML
[For a new case in this court, leave blank.
The court will assign a case number.]

Demanded Jury trial

[The top of this page is the caption. Everything you file in this case must have the same caption. Once you know your case number, it is VERY IMPORTANT that you include it on everything you send to the court for this case. DO NOT send more than one copy of anything to the court.]

PRISONER COMPLAINT

#	Defendant's Name and Job Title	Work Address
1	[Put the defendant named in the caption in this box.] <u>Cathleen Capron</u> <u>MAST SUPERVISOR</u>	<u>Westville Correctional Facility 5501 S 1100 West</u> <u>Westville IN 46391</u>
2	[Put the names of any other defendants in these boxes.] <u>Lt. HERR</u>	<u>Westville Correctional Facility 5501 S 1100</u> <u>West Westville, IN 46391</u>
3	<u>Lt Armstrong</u>	<u>Westville Correctional Facility 5501 S 1100 West</u> <u>Westville IN 46391</u>

[If you are suing more defendants, attach an additional page. Number each defendant. Put the name, job title, and work address of each defendant in a separate box as shown here.]

- How many defendants are you suing? 9
- What is the name and address of your prison or jail? Kevin Martin Westville
Correctional Facility 5501 S 1100 West Westville, IN 46391
- Did the event you are suing about happen there? ☒ Yes. ☐ No, it happened at: _____
- On what date did this event occur? 10-28-19- 10-29-19 and other date in
the complaint?

[DO NOT write in the margins or on the back of any pages. Attach additional pages if necessary.]

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(-1-)

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(4) Lt Michael ^{CAIN} chain Westville Correctional Facility 5501 S 1100 WEST Westville, IN 46391

(5) C/O Gibson Westville Correctional Facility 5501 S 1100 WEST Westville, IN 46391

(6) Sgt Chilling Westville Correctional Facility 5501 S. 1100 WEST Westville, IN 46391

(7) P/O Biaty Westville Correctional Facility 5501 S 1100 WEST Westville IN 46391

(8) J Harvill Westville Correctional Facility 5501 S 1100 WEST Westville, IN 46391

(9) Sgt Spates Westville Correctional Facility 5501 S 1100 WEST Westville, IN 46391

ground-1-) DEFendant, "cathleen capron, Lt heare,
sgt spatoes, Lt Armstrong, Lt michael chain, C/O Gibson
sgt chilling, C/O Blaty J. Harevell while
Acting under color of state Law was deliberately
indifferent which resulted in a First Amendment
Violation of the plaintiff protected of Free
Speech to communication with Attorney's
court's and government official's protected

ground-2-) DEFendants cathleen capron Lt heare
sgt spatoes, Lt Armstrong Lt michael chain C/O Gibson
sgt chilling C/O Blaty J. Harevell while
Acting under color of state Law was
deliberately indifferent which resulted
in sixth Amendment violation of the
plaintiff protected guarantees the
right of counsel only the communications
protected.

ground- 3)

DEFendant Cathleen Capron Lt here Lt

Armstrong Lt Michael 'Chain', C/O Gibson, Sgt Spates
Sgt Chilling C/O Islety while acting under

color of state law was deliberately indifferent
which resulted in Fourth Amendment violation

of the plaintiff privileged and special security

interest for legal mail been open and inspect

out the plaintiff presence protected by the

amendment.

ground 4.) Defendant J. Harvill while acting
under color of state law was

deliberately indifferent which resulted

in 14 Amendment violation of the

Plaintiff grievance procedure to

Exhaustion of administrative before

gain access to a Federal court. Fair

procedures within prison and this was

a intent to restrict the plaintiff

access to court because the attorney

General will file a motion for summary

judgment.

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14)

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CLAIMS and FACTS

DO: Write a short and plain statement telling what each defendant did wrong.

DO: Use simple English words and sentences.

DO NOT: Quote from cases or statutes, use legal terms, or make legal arguments.

DO: Explain when, where, why, and how each defendant violated your rights.

DO: Include every fact necessary to explain your case and describe your injuries or damages.

DO: Number any documents you attach and refer to them by number in your complaint.

DO NOT: Include social security numbers, dates of birth, or the names of minors.

DO: Use each defendant's name every time you refer to that defendant.

DO: Number your paragraphs. [The first paragraph has been numbered for you.]

1. THE plaintiff RECEIVE Legal mail inside his mail bag on this date, "Aug 30-2019" Aug 23 2019, "oct 19, 19 Aug, 19, Jul, 19, 2019 Aug 14, 2019, Aug 14, 2019 IS the date on the envelopes," And westville shall have the sign in shirt with sgt, or Lt who deliver Legal mail and sign that he witness the plaintiff get this Legal mail on this date's - Address of All the envelopes the plaintiff have to prove what relevant because the Facility don't give the plaintiff the envelopes, (1-) us district court 921 ohio street Room 104 Terrace Haute IN 47807 (2) clerk of the Indiana supreme court 216 state House Indianapolis, Indiana 46204 (3) clerk's of the Supreme court 216 state House Indianapolis IN 46204 (4-) Sullivan County circuit court Sullivan County Courthouse 100 Courthouse square Room 306 Sullivan Indiana 47882 (6) Department of correction 302 W Washington st room B-334 Indianapolis, IN 46204-2738 (7) clerk of the Indiana supreme court 216 state house Indianapolis IN 46204 (8) Attorney General Curtis Hill Jr 302 West West Washington Ind 600 Center 5th Floor

(5-)

Claims and Facts (continued)

Indianapolis, Indiana 46204," if the plaintiff have this envelopes prove the mail-room or staff member violation doc policy 02-01-103 connected the defendant with conspiracy and tamper with legal mail is a criminal offense, under Federal rules 1815 mail tamper, and if a pattern of this staff member open the legal-mail out of my presence is diabolical wrong and I'm seeking charge to filed against all this defendant, "because in the world if somebody go into your mail-box and remove your mail will be charge, and this fall within the Equal protection mean the government can't change one person and not the other which guarantees Equal protection of the law to all citizen's. Sgt spatore's pass out legal mail on 10-28-19. And 10-29-19, mean is sign should be on the, sign in sign as a witness that martin receive this legal mail by Sgt spatore's and sign for it on this dates, but the mail room lady was on the range on 10-29-19 and martin asking her about the legal mail (martin) attorney send on 10-17-19 westville sign that they receive and the plaintiff should get this legal mail next day by the doc policy and that, then happen on 10-28-19 c/o Gibson witness this legal mail from the southern district place inside the mail bag. And 10-29-19 Sgt chilling and c/o Blaty witness this legal mail from my counsel name Robert E. Duff Indiana Consumer Law Group

THE LAW OFFICE OF ROBERT E DUFF PO BOX 7251
Fisher, IN 46037, and the mail room wrote a
letter said it not legal mail and my counsel call
Attorney General office and told Marley Hancock
who could just request the sign in sheet and
saw the mail room on Lt or Sgt withheld
legal mail and open it and reading it Sgt Chilling
saw but it a video tape on the ~~range~~ range
shall show Sgt Spatoes pass out the legal mail
on this date's. And C/O Blaty also witness
this in the mail bag. SEE EXHIBIT-A)

And EXHIBIT B) Tracking number 9905511

899561969952737.) on October 17, 2019

At 9:20 am the mail room on Agent sign

For this legal mail seeking the name to

Amend and add name and all name of

staff member that work in the mailbox

to add as Defendant in this case.

Also the grievance specialist J Harvill REFUSE
to accept martin grievance on this issue about my
Legatmail been open by mail-room or Lt or sgt
infringements of the Authority to abuses and
SEE the plaintiff U.S constitution been violation
and arbitrary disregard of martin right to
Exhaustion his grievance process martin own

have one CASE-Log number clear point to
mr Harvill deny martin within prison without
FAIR procedures DUE process," mean's it done

with malice by mr Harvill. And martin attach
EVERY BODY I wrote about the problem with the grievance at this
Facility.

RELIEF

SEEKING Injunctive relief For tamper with mail-been change And
been Further From sgt, Lt And mail-Room open Legat
mail out of your presence and compensatory damages, For interfere
with the process to assist his counsel in prepare a defense to response
back to a motion and punitive damages, For withhold the Legatmail
12-DAY out of ill will For reading it and disregard the
Plaintiff constitutional or did the defendant have a court order
For special reason to open the Legatmail. \$ 100,000.00
I have authentic real ID. Just
inform the court. Thank you.

5. When did this event happen?

- ☐ Before I was confined.
☐ While I was confined awaiting trial.
☒ After I was convicted while confined serving the sentence.
☐ Other: _____

6. Have you ever sued anyone for this exact same event?

- ☐ No.
☒ Yes, attached is a copy of the final judgment OR an additional sheet listing the court, case number, file date, judgment date, and result of the previous case(s).

7. Could you have used a prison grievance system to complain about this event?

- ☐ No, this event did not happen in a prison or jail.
☐ No, this event is not grievable at the prison or jail where it occurred.
☐ Yes, I filed a grievance and attached is a copy of the response from the final step.
☒ Yes, this event was grievable, but I did not file a grievance because THE

grievance specialist is RACE against black at this Facility. attach the document that is relevant

8. If you win this case, what do you want the court to order the defendant(s) to do?

[NOTE: A case filed on this form will not overturn your conviction or change your release date.]

stop open offender mail. legal mail respect the doc policy and us constitutional.

[Initial Each Statement]

- ☐ I will pre-pay the filing fee OR file a prisoner motion to proceed in forma pauperis.
☒ I will keep a copy of this complaint for my records.
☐ I will promptly notify the court of any change of address.
☐ I declare under penalty of perjury that the statements in this complaint are true.

I placed this complaint in the prison mail system on 11/1/2019 at 8:45 am/pm.

[Do not fill in this date and time until you give the complaint to prison officials to send to the court.]

Signature

KEVIN MANTON

Prisoner Number

169789

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Affirmative witnesses

C/o Blaty

Robert E. Duff

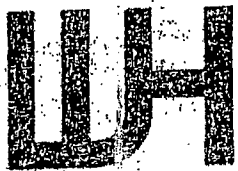
Richard A. Waples

ms white.

D. H. B. Brown

Plaintiff could Exhausted All
Administrative Remedies because
I was placed on grievance
Abuse, under I Dec 02-30/

Plaintiff context that he is
protected by 18 USC 3626 which
the prison conditions are inhumane
and unconstitutional.



WAPLES HANGER

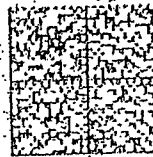
10 North Audubon Road
Indianapolis, Indiana 46219

INDIANAPOLIS

CONFIDENTIAL

Attorney - Client
Correspondence

IN 460
CS JUL 18
PM 41



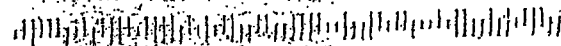
UNITED STATES POSTAGE
PITNEY BOWES

02 1P \$ 000.500
0000254439 JUL 02 2019
MAILED FROM ZIP CODE 46219

Kevin Martin, DOC # 169789
Wabash Valley Correctional Facility
P.O. Box 1111
Curlisle, IN 47838

B501

47838-111111



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