

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSUE AUGUSTE,	:	
	:	
Plaintiff	:	PRISONER
v.	:	Case No. 3:04cv248(MRK)
	:	
DEP'T OF CORRECTIONS, ET AL.,	:	
	:	
Defendant.	:	

RULING AND ORDER

Plaintiff Josue Auguste, an inmate currently confined at the Franklin County House of Corrections in Greenfield, Massachusetts, brings this civil rights action *pro se* and *in forma pauperis* pursuant to 28 U.S.C. § 1915. The plaintiff alleges that the defendants have failed to provide him with adequate access to the prison law library. For the reasons that follow, the complaint is dismissed.

A district court enjoys substantial discretion to manage its docket efficiently to avoid duplicate litigation. To achieve this result, courts are given the power to dismiss an action when a prior pending action between the same parties has been filed, as long as the "controlling issues in the dismissed action will be determined in the other lawsuit." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1360, at 442 (2d ed. 1990). The general rule is that the first suit to be filed should have priority "absent the showing of balance of convenience in favor of the second action." *Adam v. Jacobs*, 950 F.2d 89, 93-94 (2d Cir. 1991) (internal quotation marks and citation omitted).

The plaintiff has filed another action against defendants Department of Correction,

Warden Strange, Mr. Ellis and Mr. Cavanaugh. *See Auguste v. Department of Corrections, et al.*, No. 3:03cv2052 (SRU). A comparison of the complaint in this action with the complaint in the other action reveals that the allegations in the two complaints are virtually identical. Although the plaintiff has added one new defendant in the present case, nothing prevents him from filing an amended complaint in the first case to add this individual as a defendant there. *See Gyadu v. Hartford Ins. Co.*, 1998 U.S. App. Lexis 1230 (2d Cir. Jan. 28, 1998). As the Second Circuit has noted, a plaintiff has "no right to maintain two actions on the same subject in the same court, against the same defendant at the same time." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 139 (2d Cir. 2000).

Accordingly, the complaint is DISMISSED under the prior pending action doctrine, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), which permits the Court to dismiss at any time claims which fail to state a claim upon which relief may be granted. The Clerk is directed to close this case..

SO ORDERED this 16th day of April, 2004, at New Haven, Connecticut.

/s/ Mark R. Kravitz
United States District Judge