

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GARY B. CAMPBELL,

Plaintiff,

ORDER

v.

01-C-0524-C

GARY R. McCAUGHTRY,

Defendant.

This case was dismissed on the ground that plaintiff had failed to amend his complaint to identify any individual who personally participated in denying him his prescribed medication for Dysthymic Disorder and Generalized Anxiety Disorder in June, 2001, while he was an inmate at the Waupun Correctional Institution. This was error, and the April 17, 2002, judgment dismissing this case will be vacated.

A close review of plaintiff's proposed amended complaint reveals that although he continues to refer to John and Jane Doe defendants in the caption and the body of his amended complaint, he also identifies two individual defendants that were not named in his original complaint, a Sgt. Toney and Sgt. Rollins.

In the body of his complaint, plaintiff alleges that Toney

totally disregarded [plaintiff's] requests [for his medication] and did not even attempt to have [his] medication sent over being that it didn't come with the escorting staff [when plaintiff was moved from one cell block to another], and that [plaintiff] repeatedly requested it.

With respect to proposed defendant Rollins, plaintiff alleges that he “did not do his job and send [plaintiff's] control medication with the escorting staff officials” Plaintiff alleges also that as a result of his not having received his prescribed medication, he had an anxiety attack and could not sleep, and that he possibly could have experienced a stroke, heart attack, seizure or died.

Plaintiff's allegations against Toney are sufficient to state a claim that this defendant was deliberately indifferent to plaintiff's serious mental health care needs. I will allow the case to go forward against him. The question whether plaintiff has stated a claim against defendant Rollins is closer. Plaintiff alleges that Rollins “did not do his job” when he failed to send plaintiff's prescribed medications along with plaintiff to his new cell block. From this vague allegation, it is not possible to tell whether plaintiff is alleging that Rollins's failure to send his medication with him at the time he was moved was deliberate or inadvertent. If Rollins's failure to arrange for plaintiff's medications to be transferred with him to his new housing unit was inadvertent or the result of negligence, plaintiff's claim is not cognizable in an action under 42 U.S.C. § 1983. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996) (“inadvertent error, negligence or even ordinary malpractice” are insufficient grounds for

invoking the Eighth Amendment); Duckworth v. Franzen, 780 F.2d 645, 653 (7th Cir. 1985)("Negligence, gross negligence, or even 'recklessness' as that term is used in tort cases, is not enough" to state a claim under the Eighth Amendment.) Nevertheless, plaintiff's allegations are sufficient to put Rollins on notice of plaintiff's constitutional claim against him. Therefore, I will allow plaintiff to proceed on his claim against defendant Rollins. Plaintiff should be aware, however, that if he is to succeed on his Eighth Amendment claim against either defendant, he will have to prove that each interfered intentionally with his prescribed treatment, knowing that the interference would subject plaintiff to a substantial risk of serious harm. See Farmer v. Brennan, 511 U.S. 824, 837 (1994). ("official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.")

Plaintiff will not be allowed to proceed on his amended complaint against John and Jane Doe defendants or against Gary McCaughtry, against whom plaintiff was allowed to proceed originally for the sole purpose of discovering the names of the Doe defendants. There are no allegations of constitutional wrongdoing against McCaughtry in plaintiff's amended complaint. He cannot be sued under 42 U.S.C. § 1983 simply because he is a high official with supervisory responsibility for his staff, as plaintiff alleges. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Moreover, plaintiff has run out of time to search for the names of additional Doe defendants. He had ample time to complete this process in the

time leading up to the dismissal of the action.

ORDER

IT IS ORDERED that

1) On the court's own motion, the April 17, 2002, judgment dismissing this case is VACATED;

2) Plaintiff's amended complaint is considered to have been filed as of the date of this order;

3) Plaintiff may proceed against defendants Sgt. Rollins and Sgt. Toney on his claim that these defendants were deliberately indifferent to his serious mental health care needs when they interfered in his ability to receive prescribed medication in violation of plaintiff's Eighth Amendment rights;

4) Plaintiff's claims against Gary McCaughtry and all remaining John and Jane Doe defendants are DISMISSED and the complaint is dismissed as to these defendants; and

5) As soon as defendants Rollins and Toney are served with plaintiff's amended complaint and defendants have had an opportunity to file a responsive pleading, a preliminary pretrial conference will be scheduled at which the magistrate judge will set expedited deadlines for filing dispositive motions and completing discovery and a prompt

trial date so that this case can be moved to resolution quickly.

Entered this 15th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge