

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

WILLIAM FREDERICK WILLIAMS,

Plaintiff,

v.

DEPUTY LINGUARD;
and KARIANNE KUNDERT,

Defendants.

ORDER

02-C-0472-C

Plaintiff is proceeding in forma pauperis in this case on two claims: 1) defendant Kundert retaliated against him on May 19, 1996, by failing to conduct an impartial hearing and forging proposed defendant Listug's signature on his appeal form because he had named her as a defendant in a § 1983 complaint; and 2) defendant Linguard subjected him to cruel and unusual punishment on April 29, 1996, when he directed an inmate to turn up the volume on the television knowing plaintiff had an ear condition that would cause him to suffer intense ringing in the ear and an excruciating migraine headache from the noise. On February 19, 2003, defendants moved for summary judgment and a briefing schedule was established.

Now plaintiff has filed a motion for leave to file an amended complaint. In his proposed amended complaint, plaintiff seeks to revive a claim of conspiracy under 42 U.S.C. § 1985(3), which was dismissed as legally frivolous from his original complaint. Plaintiff's amended claim of conspiracy alleges a racially motivated animus, an allegation missing from his original claim, and is aimed at 19 individually named co-conspirators and "all of Dane County Sheriff's Department." Plaintiff contends the conspiracy began in 1996 and continues through the present and reveals itself in undesirable cell assignments, "trumped up" incident reports, and "intentional confiscation" of legal materials.

It is too late for plaintiff to amend his complaint to add several new defendants and enhance his factual allegations in an attempt to cure the fatal defect in his original conspiracy claim. As noted above, defendants moved for summary judgment on February 19, 2003. The briefing schedule allowed plaintiff until March 27, 2003, in which to oppose the motion. Although his opposition papers have not yet arrived at the court, it is possible that plaintiff sent them in compliance with "mail box" rule established in Houston v. Lack, 487 U.S. 266 (1988) (pro se prisoner's filing deemed timely if delivered to prison authorities within applicable time limit.) In any event, the court will be taking the motion for summary judgment under advisement within the next two weeks. It is not in the interests of justice to cause the case to be prolonged significantly longer by allowing plaintiff to amend his complaint to name new defendants and raise a claim that could be raised in a

separate lawsuit.

Accordingly, IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED.

Entered this 7th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge