

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

BRENTFORD TAYLOR,

Petitioner,

MEMORANDUM

v.

02-C-0548-C

PHYILLIS J. DUBE, in her official and individual capacity; JON E. LITSCHER, in his official and individual capacity; BYRON BARTOW, in his official and individual capacity; MARIO CANZIANI, in his official and individual capacity; KELLY ZAREMBR, in her official and individual capacity; MICHELLE COOPER, in her official and individual capacity; DAM SMITHBACK, in his official and individual capacity; and SARAH CORCORAN in her official and individual capacity,

Respondents.

This case has been dismissed twice. On October 29, 2002, I dismissed the case for lack of subject matter jurisdiction after construing petitioner's complaint to allege a claim that he had been injured by respondents' negligent acts. Judgment was entered on October 31, 2002. On November 14, 2002, petitioner filed a motion for reconsideration that I

construed as a timely filed motion to alter or amend the judgment. In his motion, petitioner made it clear that the claim he intended to raise was that his working conditions constituted cruel and unusual punishment in violation of the Eighth Amendment, a claim over which this court has jurisdiction. On November 21, 2002, I vacated the judgment of dismissal for lack of jurisdiction and screened petitioner's constitutional claim under 28 U.S.C. § 1915. I then denied petitioner's request for leave to proceed in forma pauperis on his constitutional claim on the ground that it was without legal merit and entered an amended judgment dismissing the case.

Subsequently, petitioner filed a notice of appeal. On November 27, 2002, I denied petitioner's request for leave to proceed in forma pauperis on appeal and certified that the appeal was not taken in good faith.

Now petitioner has filed an original and several copies of a proposed amended complaint, together with a letter in which petitioner states his understanding that when I vacated the first judgment, I was opening the door for him to file an amended complaint. Petitioner also requests an explanation of the term, "Fed. R. Civ. P." In a separate communication, petitioner requests that his appeal be dismissed because he did not realize at the time he filed the notice of appeal that he could amend his complaint in this court.

Petitioner is wrong in thinking that I have offered him an opportunity to amend his complaint. The October 31 judgment was vacated was so that I could consider petitioner's

claim in the light he intended it to be considered in the first place, that is, as a claim alleging a constitutional violation. After I found petitioner's constitutional claim to be legally meritless, the clerk entered an amended judgment dismissing the case on its merits. It is now too late for petitioner to amend his complaint. I have ruled definitively on his claim and he has taken an appeal from the judgment of dismissal. His appeal divests this court of jurisdiction to consider anything more relating to the merits of his case, even if there were a reason to reconsider the merits, which there is not. Given this clarification, it is not likely that petitioner would wish to withdraw his appeal. If he intends to do so, however, he should make the request directly to the court of appeals, not to this court.

With respect to petitioner's request for clarification of the citation to "Fed. R. Civ. P.," the abbreviation refers to the Federal Rules of Civil Procedure, a book that is available to petitioner in the prison library.

Because I cannot consider petitioner's amended complaint, I am placing one copy in

the court's file for record purposes only and am returning the extra copies to petitioner with a copy of this order.

Entered this 9th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge