

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

HARRISON FRANKLIN,

Plaintiff,

OPINION AND
ORDER

v.

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,
PAULINE BELGADO, SARGENT SIEDOSCHLAG,
PETER HUIBREGTSE, LINDA HODDY-TRIPP,
JIM WEGNER, SARGENT LIND, CAPTAIN JOHN P
GRAHL, SARGENTDAN MEEHAN, CO II MIKE
GLAMAN, and NURSE HOLLY MEIER,

Defendants.

In an opinion and order dated May 27, 2003, I granted in part and denied in part defendants' motion to dismiss some of plaintiff Harrison Franklin's claims. Defendants have filed a motion for clarification of several issues that they discussed in the brief in support of their motion to dismiss. In addition, defendants request an extension of time to amend their answer until after plaintiff has identified several John Doe defendants. According to the magistrate judge's preliminary pretrial conference order, plaintiff must amend his complaint to identify these defendants by June 6, 2003. The new defendants have until June 23, 2003,

in which to answer. Because the answer of the new defendants is likely to parrot the answer filed by the present defendants, it makes sense from an efficiency standpoint to allow defendants to file one combined answer. Therefore, defendants may have until June 23, 2003, in which to file an amended answer.

With respect to plaintiff's motion for clarification, the first issue concerns plaintiff's allegations that he was denied medication after his finger was partially amputated in the summer of 1999. Defendants request clarification on whether this claim was dismissed for failure to exhaust his administrative remedies. It was. On page twelve of the opinion and order, I concluded that plaintiff's claims that "defendants Paulino Belgado, John Grahl, Jim Wegner, Holly Meier and Gary McCaughtry refused to provide plaintiff with medical care after his surgery" would be dismissed for plaintiff's failure to exhaust his administrative remedies. Plaintiff's claim that he was denied medicine were necessarily included in that dismissal.

The second issue concerns plaintiff's allegations that defendants McCaughtry, Belgado and Siedoschlag directed defendants Grahl, Meehan and Glaman to retaliate against plaintiff for filing a lawsuit by handcuffing him to a door, performing a body cavity search on him, placing him in a freezing cell with no mattress, sheets or blankets, feeding him "seg loaves" and transferring him to the Wisconsin Secure Program Facility. In the May 27 opinion and order, I concluded that plaintiff exhausted his administrative remedies with

respect to his claim that defendants retaliated against him by subjecting him to a body cavity search. However, I did not address whether plaintiff had administratively exhausted his claim that defendants retaliated against him by placing him in a freezing cell, feeding him “seg loaves” and transferring him to the Secure Program Facility. That was an oversight. Plaintiff’s inmate complaint addressed the body cavity search only. Plaintiff did not file a grievance alleging that defendants retaliated against him in any other way. Accordingly, all of plaintiff’s retaliation claims should have been dismissed, with the exception of his claim that defendants McCaughtry, Belgado and Siedoschlag directed defendants Grahl, Meehan and Glaman to retaliate against plaintiff by subjecting him to a body cavity search.

Third, defendants seek clarification regarding whether plaintiff has stated a claim with respect to his allegation that defendant Belgado knew his finger was cancerous but did not tell him. The short answer to this question is no. In most circumstances, withholding information, without more, would not be sufficient to establish a violation of the Eighth Amendment. Thus, I agree with defendants that this allegation fails to state a claim upon which relief may be granted. However, this does not mean that the fact is irrelevant. My understanding of the case is that plaintiff intends to use evidence of defendant Belgado’s knowledge of his condition to prove deliberate indifference. If plaintiff proves that defendant Belgado knew that plaintiff had a serious medical condition but still refused to treat it, this would support an inference that Belgado was deliberately indifferent to

plaintiff's health.

Finally, defendants argue that defendant Siedoschlag should be dismissed from the case because all the claims against him have been dismissed. This is incorrect. One claim remains: that defendant Siedoschlag directed other defendants to retaliate against plaintiff. To establish liability under 42 U.S.C. § 1983, a plaintiff must show only that a defendant was personally involved in the alleged constitutional violation, meaning that the defendant directed or consented to the illegal conduct. Doyle v. Camelot Care Centers, 305 F.3d 603, 614-15 (7th Cir. 2002). Plaintiff does not have to show that defendant Siedoschlag himself was physically involved in the strip search. Admittedly, plaintiff faces an uphill battle on this claim. Proving that defendant Siedoschlag directed others to strip search plaintiff because plaintiff filed a lawsuit against him is no small task. Nevertheless, I cannot dismiss defendant Siedoschlag at this stage of the proceedings.

ORDER

IT IS ORDERED that

1. Defendants' motion for clarification is GRANTED. Plaintiff Harrison Franklin's claim that defendants Gary McCaughtry, Paulino Belgado, Sargent Siedoschlag, John Grahl, Dan Meehan and Mike Glaman retaliated against him by placing him in a freezing cell, feeding him "seg loaves" and transferring him to the Wisconsin Secure Program Facility is

DISMISSED for plaintiff's failure to exhaust his administrative remedies.

2. Defendants' motion for an extension of time to file an amended answer is GRANTED. Defendants may have until June 23, 2003, in which to file and serve an amended answer.

Entered this 4th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge