

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

In an order entered in this case on September 27, 2002, I denied plaintiff leave to proceed in forma pauperis on claims that

- His due process rights were violated when (1) he was denied witnesses or a staff advocate at a disciplinary hearing; (2) defendant Kundert allegedly forged defendant Listug's signature, affirming the outcome of a disciplinary hearing on appeal; and (3) proposed defendant Goldberger took away visitation privileges for a week without a hearing;
- His Eighth Amendment right to be free from cruel and unusual punishment was denied when in March 1996, proposed defendants Brigham and Meuer

placed him near a television after he informed them that he suffered from tinnitus and when in April 1996, proposed defendants Jones, Meuer and Horstmann and defendant Kundert encouraged unnamed inmates to turn up the volume on the television;

- His Fourth Amendment right to be free of excessive force was denied when, on March 13, 1996, proposed defendant Horstmann twisted and pulled up on plaintiff's wrist with handcuffs; and
- Proposed defendant Betty was negligent when she told plaintiff's trial counsel mistakenly that a critical witness, Michael A. Shea, had been served a subpoena ordering him to appear at trial when in fact Shea had not been served.

In the same order, I granted plaintiff leave to proceed on claims that

- 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
- 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.

I stayed a decision on plaintiff's claims that he was denied his constitutional right of access to the courts when proposed defendants Hendrickson (on April 28, 1996) and Listug (on May 19, 1996) denied him access to his legal materials, in order to allow plaintiff an opportunity to supplement his allegations with information to show that the denial caused him to suffer an injury. When plaintiff did not make the showing, I denied his request for leave to proceed against Hendrickson and Listug in an order dated November 21, 2002.

Now plaintiff has filed a "Motion to Clarify," in which he states that the court overlooked a claim in his complaint that the proposed defendants conspired in violation of 42 U.S.C. § 1985(3) to deprive him of his constitutional rights. He asks for clarification whether he has been permitted to proceed on this claim.

Section 1985(3) applies to conspiracies to deprive a person of his or her civil rights on the basis of sex, ethnicity and religion. Volk v. Coler, 845 F.2d 1422, 1434 (7th Cir. 1988); see also United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 838 (1983) (section 1985(3) does not reach conspiracies having a non-racial motivation, such as commercial interests.). The statute requires proof of a racial or otherwise class-based discriminatory animus behind the conspirators' actions. Griffin v. Breckenridge, 403 U.S. 88 (1971); Hampton v. Hanrahan, 600 F.2d 600, 623

(7th Cir. 1979); Munson v. Friske, 754 F.2d 683, 694 (7th Cir. 1985). Nothing in plaintiff's complaint supports an inference that the defendants he named in his complaint acted in concert or made any sort of agreement to take joint action to violate his constitutional or civil rights because of his race, sex or religion. See Loy v. Clamme, 804 F.2d 405, 408 (7th Cir.1986) (prisoner did not state claim under §§ 1985(3) and 1986 because he failed to allege any racial animus.) Therefore, although I did not address the matter earlier, I will make it explicit in this order that plaintiff may not proceed in forma pauperis on his conspiracy claim under 42 U.S.C. § 1985(3) because the claim is legally frivolous.

ORDER

IT IS ORDERED that plaintiff's motion to clarify is GRANTED.

Further, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on his claim that the defendants he named in his complaint conspired to deprive him of his constitutional rights in violation of 42 U.S.C. § 1985(3) is DENIED and this

claim is DISMISSED as legally frivolous.

Entered this 20th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge