

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

EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGHTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

ORDER

03-C-129-C

Plaintiff Eugene Cherry has been allowed to proceed in this case on claims that (1) defendants Tim Belz and Henry Bray violated his right of access to courts and free speech when they retaliated against him for filing lawsuits against other prison officials and complaining about prison conditions; (2) defendants Belz, Bray, Matthew Frank, Gerald Berge, Peter Huibregtse, Brad Hompe and Gary Boughton violated his right to be free from cruel and unusual punishment when Belz and Bray placed needles and staples in his food and the other defendants were aware of their misconduct but refused to intervene; (3) defendant Hompe retaliated against plaintiff by issuing him false conduct reports because

plaintiff filed a lawsuit against Hompe's wife and complained about Bray's and Belz's misconduct in violation of petitioner's right of free speech and access to courts; (4) defendant Sgt. C. Haney performed a body cavity search on plaintiff in a manner that violated his rights to be free from excessive force and unreasonable searches and defendant Joan Gerl refused to intervene; and (5) defendant Gerl refused to provide him with medication in violation of his right to adequate medical care.

Now before the court is plaintiff's fifth motion for appointment of counsel. The motion is accompanied by a number of letters addressed to plaintiff from lawyers who have declined to represent him on his claims in this case.

Plaintiff's first motion for appointment of counsel was denied because the record was too fresh to allow the court to assess whether plaintiff was capable of presenting his own case in view of the complexity of his claims. His subsequent motions were denied because it appeared clear that plaintiff was competent to represent himself on his claims. I have observed plaintiff personally at the hearing on the preliminary pretrial conference held in this case on July 17, 2003. He exhibited a skill level higher than the average pro se litigant in presenting his evidence and questioning his witnesses. Although the motion was denied, plaintiff appeared to have a clear understanding of his burden of proof and had secured relevant voluntary testimony and documentary evidence to support his position.

Plaintiff is not new to this court. He has prosecuted without counsel lawsuits

involving claims of retaliation, unreasonable searches, unconstitutional physical conditions of confinement, and denial of medical or mental health care. I am convinced that he is competent to prosecute this case.

Accordingly, IT IS ORDERED that plaintiff's motion for appointment of counsel is DENIED.

Entered this 4th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge