IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM FAULKNER, #244067,

Plaintiff, ORDER

v. 04-C-409-C

JON LITSCHNER, Former Sec. WI. D.O.C.;
DANIEL BENICK, Former Warden, C.C.I.;
MIKE MARSHALL, Social Worker, C.C.I.;
DR. BRIDGEWATER, M.D., C.C.I.;
FRED FIGUEROA, Former Warden, Whiteville Corr. Facility;
MS. POLK, Social Worker, Whiteville;
MS. RIVERS, Officer, Whiteville Corr. Facility;
JOSEPH OROSCO, #335933, Former Inmate, Whiteville
Corr. Facility;
ALL UNNAMED WHITEVILLE STAFF;
ALL UNNAMED WHITEVILLE SECURITY
PERSONAL/DIRECTORS; and
ALL WI D.O.C. PERSONAL WITH INTERSTATE TRANSFERS,

Defendants.

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In an order dated July 26, 2004, I dismissed plaintiff's claim that defendants had violated his right to be free from cruel and unusual punishment by failing to protect him from another inmate's assault. I concluded that plaintiff failed to state a claim upon which relief could be granted because he had declined an offer to be transferred to segregated

confinement for protection.

Plaintiff has filed two motions: (1) a "motion to reargue," which I construe as a motion to alter or amend the judgment under Fed. R. Civ. P. 59; and (2) a motion to amend his complaint to include additional allegations. Both motions will be denied. In his proposed amended complaint, plaintiff admits still that he was given the option of placement in segregated confinement to protect him from a possible assault. Plaintiff argues that this fact should not bar his claim because it was not the "least restrictive means" by which prison staff could have protected him. Instead, they should moved him to a different cell or placed his cell mate in segregation.

Plaintiff's disappointment is understandable. Perhaps defendants could have found ways to protect him without placing him in segregation. Unfortunately for plaintiff, the Eighth Amendment does not require prison officials to use the least restrictive means in protecting an inmate. As I explained in the screening order, officials are liable only if they are "deliberately indifferent" to an inmate's safety. This means that the officials must have known about a substantial risk to the inmate's safety but they did not take reasonable steps to prevent it. In this case, defendants did take steps to prevent the assault; I cannot conclude that the defendants' proposed solution was unreasonable simply because it was not the most convenient one for plaintiff. The Court of Appeals for the Seventh Circuit has noted that placing an inmate in segregation is an appropriate way to protect an inmate from

harm. Case v. Ahitow, 301 F.3d 605, 607 (7th Cir. 2002). Because plaintiff has not persuaded me that I erred in dismissing his action, his motion to alter or amend the judgment is DENIED. Further, plaintiff's motion to amend his complaint is DENIED because doing so would be futile. The allegations in plaintiff's proposed amended complaint do not state a claim upon which relief may be granted. Plaintiff has 30 days from the date of this order in which to file a notice of appeal.

Entered this 25th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge