IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TODD A. LAGERSTROM,

Plaintiff,

OPINION AND ORDER

v.

05-C-718-C

PHIL KINGSTON, Warden at Columbia Correctional Institution;
LIEUTENANT MORRIS;
MESSRS. SUTTON AND SPANGLER, Unit Managers at C.C.I., all in their individual and official capacities,

Defendants.

- -

This is a civil action for declaratory and monetary relief under 42 U.S.C. § 1983 in which plaintiff Todd Lagerstrom, an inmate at the Waupun Correctional Institution in Waupun, Wisconsin, alleges that defendants violated his due process rights under the Fourteenth Amendment of the United States Constitution. Plaintiff has paid the fee for filing his complaint. Nevertheless, because plaintiff is incarcerated, the court must screen his complaint before allowing the case to proceed. 28 U.S.C. § 1915A.

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). When the litigant is a prisoner, the court must examine the prisoner's claims, interpreting them broadly, and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Plaintiff Todd Lagerstrom is an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. He was formerly incarcerated at the Columbia Correctional Institution in Portage, Wisconsin and the Wisconsin Secure Program Facility in Boscobel, Wisconsin.

Defendant Phil Kingston is the former warden of the Columbia Correctional Institution and current warden of Waupun Correctional Institution. As warden, defendant Kingston was responsible for the operation and management of the Columbia Correctional Institution.

Defendant Morris is a lieutenant at the Columbia Correctional Institution. He is legally responsible for investigating allegations of prisoner misconduct and interviewing all confidential informants who report misconduct.

Defendants Spangler and Sutton are employees of the Columbia Correctional

Institution. In June 2004, defendants Spangler and Sutton were assigned to serve as hearing officers at plaintiff's disciplinary committee hearing.

B. Transfer to the Wisconsin Secure Program Facility

On April 30, 2004, while incarcerated at the Columbia Correctional Institution, plaintiff was placed in temporary lock-up and transferred to the Wisconsin Secure Program Facility, the harshest and most restrictive prison in Wisconsin. Plaintiff was informed that the transfer was due to "security concerns," but was given no further explanation. He was not given a drug test prior to his transfer or at or at any time soon thereafter.

On May 21, 2004, three weeks after plaintiff's transfer, he received a copy of conduct report number 1485488 in which defendant Morris charged him with violating Wis. Admin. Code § DOC 303.43, possession of intoxicants. The conduct report did not list an incident date, but stated that the "date of completion of investigation" was May 18, 2004. According to the disciplinary report, four confidential prison informants (whose statements were referred to as confidential informant statements 10, 11, 12 and 13) had accused plaintiff of possessing marijuana. Defendant Morris deliberately altered the content of the confidential informants' statements when he summarized them in the conduct report. He did this in order to mislead the disciplinary committee into wrongfully finding plaintiff guilty of the charge against him.

Immediately after receiving the conduct report, plaintiff completed a form entitled "offender's request for attendance of witnesses," asking that defendant Morris and the four confidential informants attend his disciplinary hearing so plaintiff could question them. In addition, plaintiff requested copies of all statements and evidence that would be used against him at the hearing so he could defend himself against the charges. Despite his requests, plaintiff was never given copies of the statements made by the confidential informants or informed of their complete contents.

On May 26, 2004, plaintiff submitted a written statement to the prison disciplinary committee in which he asserted that the substance the informants had identified as marijuana was actually loose "pouch tobacco" that he had purchased at the prison canteen. Plaintiff noted that the statements of the confidential informants, as summarized in the conduct report, did not corroborate each other and that nothing in the conduct report explained how the informants had identified the substance they alleged was marijuana. In his statement, plaintiff argued that he was unable to prepare an adequate defense to the charges made against him at the Columbia Correctional Institution while he was being held in solitary confinement at the Wisconsin Secure Program Facility.

C. Disciplinary Hearing

On June 6, 2004, a disciplinary hearing was held on conduct report 1485488 at the

Wisconsin Secure Program Facility. Defendants Spangler and Sutton traveled to the facility from the Columbia Correctional Institution to serve as disciplinary hearing officers. At the hearing, defendants Spangler and Sutton presented plaintiff with a document signed by Captain Nichil, denying plaintiff's request to have witnesses attend his hearing or answer any of his questions. In addition, defendants Spangler and Sutton showed plaintiff a document signed by defendant Morris and dated May 26, 2004, which read as follows: "Conduct report is correct as written. Nothing further to add." Defendant Morris's statement included a short notation explaining why he was not attending the hearing:

> Not employed at [the] W[isconsin] S[ecure] P[rogram] F[acility]. Inmate was transferred to [the] W[isconsin] S[ecure] P[rogram] F[acility] from [the] C[olumbia] C[orrectional] I[nstitution].

During the disciplinary hearing, no physical evidence was produced to show that defendant had possessed marijuana. Instead, defendants Sutton and Spangler relied solely on the statements made by the four confidential informants. Although statement 10 could not be located, defendants Sutton and Spangler accepted the summary of it provided in the conduct report. Defendants Sutton and Spangler relied also on statements 11, 12 and 13. (It is unclear whether defendants Sutton and Spangler reviewed the complete text of statements 11, 12 and 13 or whether they relied on the summary of those statements provided by defendant Morris in the conduct report.) At the conclusion of the hearing, plaintiff was found guilty and sentenced to 8 days' adjustment segregation and 360 days of

program segregation.

D. Appeal Process

On June 2, 2004, plaintiff appealed the disciplinary decision to the warden of the Wisconsin Secure Program Facility, attaching to his appeal form a six-page letter challenging the evidence used to convict him. The appeal was denied on July 30, 2004. Plaintiff filed inmate complaint number WSPF-2004-25989, challenging the procedures used at his disciplinary hearing, and appealed its dismissal through the inmate complaint system without success.

On October 10, 2004, plaintiff filed a writ of certiorari in the Circuit Court for Dane County, Wisconsin. In a written opinion issued April 29, 2005, Circuit Court Judge Maryann Sumi found the record supporting the disciplinary finding to be "neither complete nor persuasive." Specifically, she held that the confidential informant statements supporting the disciplinary decision were unreliable and that defendant had provided plaintiff "with approximations" of the evidence against him that "left out or significantly altered critical factual details." Statement 10 was missing entirely from the record and statement 11 "d[id] not appear to address the incidents leading to the [] disciplinary action (possession of marijuana at the Columbia Correctional Institution." Statements 12 and 13 were found to corroborate each other "only loosely" and the tone of the statements indicated that the

confidential informants were "hardly convinced of their own statements." The court reversed and vacated the disciplinary committee's findings and ordered that plaintiff be released from program segregation.

On June 7, 2005, after being confined in the Wisconsin Secure Program Facility for 396 days, plaintiff was "released to the general population."

DISCUSSION

A. Due Process and Transfer

Plaintiff alleges that he was transferred from the Columbia Correctional Institution to the Wisconsin Secure Program Facility without procedural due process. A plaintiff does not state a due process claim unless he alleges facts suggesting he was deprived of a constitutionally protected property or liberty interest. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In Wilkinson v. Austin, 125 S. Ct. 2384, 2393 (2005), the United States Supreme Court held that inmates have a protected liberty interest in avoiding confinement in certain highly restrictive, super-maximum security prisons. I have recognized previously that the Wisconsin Secure Program Facility is such an institution. Miller v. Linder, Case No. 05-C-539-C, Oct. 20, 2005 order, at 6. Therefore, I understand plaintiff to contend that his due process rights were violated by his transfer to the Wisconsin Secure Program Facility without adequate procedures.

The Wilkinson decision was issued on June 13, 2005. No court in this circuit has yet determined what process is due prisoners transferred to prisons such as the Wisconsin Secure Program Facility. Therefore, the key question with respect to plaintiff's claim in this case will be whether he received sufficient process in connection with his transfer to the Wisconsin Secure Program Facility.

Although Wilkinson, 125 S. Ct. at 2388, recognized that "informal, non-adversary procedures" may provide sufficient process in the context of the transfer of inmates to super-maximum security institutions, minimal process is different from no process. Plaintiff contends that he received no process in connection with his transfer to the facility. Although he alleges that a disciplinary hearing was held on conduct report 1485488, he has alleged no facts from which it can be inferred that the disciplinary hearing addressed his transfer to the facility. Therefore, he has stated a claim of denial of his due process rights.

Although plaintiff will be given leave to proceed on his claim that defendant Kingston violated his Fourteenth Amendment rights by transferring him to the Wisconsin Secure Program Facility without adequate process, I must caution him that even if he proves that his due process rights were violated, he is unlikely to obtain more than declaratory relief. The doctrine of qualified immunity "gives public officials the benefit of legal doubts" by immunizing them from liability when the rights they have violated were not clearly established under existing federal law. Saucier v. Katz, 533 U.S. 194, 206 (2001). In Hope

v. Pelzer, 536 U.S. 730, 739 (2002), the United States Supreme Court held:

> For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful . . . but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

The rule announced in Wilkinson was a new development that departed in important ways from earlier case law, such as the decision in Sandin v. Conner, 515 U.S. 472 (1995) (discussed at length below). Plaintiff has alleged that his transfer to the Wisconsin Secure Program Facility occurred in March 2004. The Wilkinson decision was not issued until June 2005. Therefore, even if plaintiff's transfer occurred in violation of his Fourteenth Amendment rights, it is probable that defendants will be entitled to qualified immunity on this claim.

B. Disciplinary Hearing

Next, plaintiff contends that his Fourteenth Amendment procedural due process rights were violated when defendants Sutton and Spangler found him guilty of conduct report 1485488. In support of this contention, plaintiff relies almost exclusively on the Wisconsin circuit court's holding that his due process rights were violated by prison officials. Unfortunately for plaintiff, the circuit court based its opinion upon cases that have been

superseded by later Supreme Court opinions. Applying current federal law, I find that plaintiff has failed to state a claim under the Fourteenth Amendment. Therefore, plaintiff will be denied leave to proceed on this claim.

1. Decision of the Wisconsin circuit court

As discussed above, in order to receive protection under the Fourteenth Amendment, a person must have a protected liberty or property interest. Kentucky Dept. of Corrections, at 460. Before to the United States Supreme Court's decision in Sandin, 515 U.S. 472, when state statutes or regulations guaranteed prisoners procedural protections in language of an "unmistakably mandatory character," federal courts held that those state laws conveyed protected liberty interests upon prisoners. Hewitt v. Helms, 459 U.S. 460, 471-72 (1983). However, in Sandin, 515 U.S. at 484, the Supreme Court retreated from its case-by-case analysis of state-created rights and held that when determining whether a prisoner had a liberty interest in avoiding a prison condition, the operative question was whether the conditions to which the prisoner might be subjected constituted "atypical and significant hardship[s] . . . in relation to the ordinary incidents of prison life." The Court went on to conclude that the conditions found in prison segregation units do not by themselves constitute such hardships. Id. Therefore, following Sandin, a prisoner does not have a liberty interest in avoiding segregated confinement so long as the period of segregation does

not prolong his incarceration. Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997).

When the state circuit court analyzed plaintiff's case, it focused on prison officials' failure to comply with Wis. Admin. Code § DOC 303.86(4), which provides that in a disciplinary hearing:

> If the institution finds that testifying would pose a risk of harm to the witness, the committee may consider a corroborated, signed statement under oath from that witness without revealing the witness's identity or a signed statement from a staff member getting the statement from that witness. The adjustment committee shall reveal the statement to the accused inmate, though the adjustment committee may edit the statement to avoid revealing the identity of the witness . . . . Two anonymous statements by different persons may be used to corroborate each other.

Emphasizing the mandatory nature of § DOC 303.86(4) ("The adjustment committee *shall* reveal the statement . . ."), the court concluded that plaintiff's due process rights had been violated. In reaching that conclusion, the court relied exclusively on federal cases applying pre-Sandin standards to review prison disciplinary hearings, including this court's decision in Franklin v. Israel, 537 F. Supp. 1112 (W.D. Wis. 1982). However, even under pre-Sandin cases, the state's adoption of mere procedural guidelines would not give rise to a protected liberty interest. Culbert v. Young, 834 F.2d 625, 628 (7th Cir. 1987); Studway v. Feltman, 764 F. Supp. 133, 134 (W.D. Wis. 1991). Particularly when viewed in light of Sandin and its progeny, the failure of state officials to comply with state regulations did not violate plaintiff's due process rights. I turn then to the question whether plaintiff has stated

a due process claim under prevailing federal law.

1. Protected liberty interest

In Sandin, the Supreme Court considered whether the restrictive conditions imposed upon prisoners in disciplinary confinement were deprivations of sufficient significance to warrant due process protection. In other words, the Court was asked to consider only whether prisoners had a liberty interest in avoiding the sensory deprivations that accompanied placement in segregation. In answering "no" to that question, the Court held that unless a disciplinary decision subjected a prisoner to atypical and significant deprivations beyond those normally attendant to prison life, the mere avoidance of unpleasant conditions, such as those found in segregation, would not amount to a liberty interest. Sandin, 515 U.S. at 484. However, the Court went on to say the following:

> Conner's situation [does not] present a case where the State's action will inevitably affect the duration of his sentence. Nothing in Hawaii's code requires the parole board to deny parole in the face of a misconduct report or to grant parole in its absence . . . . The chance that a finding of misconduct will alter the balance is simply too attenuated to invoke the procedural guarantees of the due process clause.

Sandin, 515 U.S. at 487. In Wagner, the Court of Appeals for the Seventh Circuit expanded on this theme, holding that

> [w]hen [prison discipline] takes the form of *prolonging the prisoner's incarceration* or otherwise depriving him of what has been held to be liberty or property

> within the meaning of the due process clauses, it is securely actionable. See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974); Vitek v. Jones, 445 U.S. 480 (1980); Washington v. Harper, 494 U.S. 210 (1990); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir.1995). But when the *entire sanction* is confinement in disciplinary segregation for a period that does not exceed the remaining term of the prisoner's incarceration, it is difficult to see how after Sandin it can be made the basis of a suit complaining about a deprivation of liberty.

Wagner, 128 F.3d at 1176-77 (emphasis added) (internal citations omitted). Although placement in disciplinary confinement *alone* does not trigger due process protections, placement in disciplinary confinement that has a non-discretionary effect on a prisoner's term of incarceration *does* implicate the Fourteenth Amendment.

Plaintiff alleges that after finding him guilty of conduct report 1485488, the disciplinary committee imposed a penalty imposed on him of 8 days' adjustment segregation and 260 days' program segregation. The relevant question, then, is whether plaintiff's placement in adjustment and program segregation had a mandatory effect on the duration of his sentence. If so, plaintiff would have a liberty interest in avoiding placement in segregation. This question is not easily answered because it requires a determination of factual information that plaintiff did not include in his complaint. In particular, it is necessary to know the specific state laws under which plaintiff was sentenced because, in Wisconsin, the applicable sentencing laws determine whether a prisoner's sentence will be extended upon his placement in segregation.

Wisconsin prisoners fall into two general categories: those sentenced for crimes

committed before December 31, 1999 (pre-"Truth in Sentencing," or pre-TIS, inmates) and those sentenced for crimes committed on or after December 31, 1999 ("Truth in Sentencing," or TIS, inmates). With certain exceptions for prisoners convicted of the most serious crimes, most prisoners serving pre-TIS sentences become eligible for parole after serving 25% of their sentences. Wis. Stat. § 304.06(1)(b). Parole is discretionary from 25%-66% of an inmate's sentence, and therefore does not create any liberty interest. See, e.g., Heidelberg v. Illinois Prisoner Review Board, 163 F.3d 1025, 1026 (7th Cir. 1998). However, once a pre-TIS inmate has served two-thirds of his sentence, Wis. Stat. § 302.11(1) mandates that the inmate be released from confinement to serve the remainder of his sentence under parole supervision. However, there are several exceptions to mandatory release. Two of these exceptions are relevant to plaintiff's case: the "loss of good time" provision of § 302.11(2)(b) and the "presumptive mandatory release" provision of § 302.11(1g).

Section § 302.11(2)(b) states:

> Any inmate who is placed in adjustment, program or controlled segregation *shall* have his or her mandatory release date extended by a number of days equal to 50% of the number of days spent in segregation status.

(Emphasis added.) In Briggs v. Gundmanson, Case No. 03-C-278-C, June 26, 2003 order, dkt. #5, at 5, this court held:

> Because inmates in Wisconsin have a protected liberty interest in not having

> their mandatory release date extended, due process applies to disciplinary actions that result in the loss of good time credits. Santiago v. Wire, 205 Wis. 2d 295, 556 N.W.2d 356 (Ct. App. 1996); Sandin v. Conner, 515 U.S. 472 (1995).

Prisoners subject to release under § 302.11(1) have a protected liberty interest in avoiding the extension of their mandatory release dates; therefore, these prisoners are entitled to due process before being placed into program, adjustment or controlled segregation.

However, not all prisoners eligible for release under § 302.11 are entitled to nondiscretionary release upon completion of two-thirds of their sentence. Section 302.11(1g) provides that inmates convicted of certain enumerated felonies are entitled only to "presumptive mandatory release." For these inmates, the parole commission may deny release if it finds that release would endanger public protection or that the inmate has refused to participate in recommended counseling or treatment while incarcerated. Wis. Stat. § 302.11(1g)(b). Because release is discretionary for these inmates, they do not have a protected liberty interest in avoiding placement in segregation (with the consequent extension of their presumptive mandatory release dates).

Plaintiff has not provided the court with any information regarding the sentence he is serving currently in the Wisconsin state prison system. However, a review of Wisconsin's publicly available circuit court records database reveals that plaintiff was convicted of felony

offenses in 1994, 1995 and 1996.[1] His convictions include violations of Wis. Stat. §§ 943.10(2) and 940.01(1). From the public record, it is clear that plaintiff is serving a pre-TIS sentence. Unfortunately, it is not clear whether plaintiff is eligible for either mandatory or presumptive release under § 302.11.

As discussed above, if plaintiff is not entitled to mandatory release under § 302.11, he would have no liberty interest at stake in his disciplinary hearing. However, even if I assume that plaintiff has a protected liberty interest in avoiding placement in program and adjustment segregation, he cannot prevail on his due process claim because his allegations reveal he received all the process he may have been due under the Fourteenth Amendment.

2. Due process

When an inmate has a protected liberty interest in the outcome of his prison disciplinary hearing, he is entitled "to those minimum procedures appropriate under the circumstances and required by the due process clause to insure that the state-created right is not arbitrarily abrogated." Wolff v. McDonnell, 418 U.S. 539 (1974). Due process mandates that prisoners be given written notice of a disciplinary charge at least twenty-four hours before the disciplinary hearing, an opportunity to present evidence including witness

[1]This information was obtained from the records available in Wisconsin's Circuit Court Access Program on December 20, 2005, available at http://wcca.wicourts.gov/index.xsl.

testimony to an impartial decision maker, a written statement explaining the evidence upon which the decision maker relied, the reasons for the disciplinary action and "some evidence" in the record to support the outcome. Id. at 564-66, 570-571; Superintendent, Massachusetts Correctional Institution v. Hill, 472 U.S. 445, 454 (1985); Piggie v. Cotton, 344 F.3d 674, 677 (7th Cir. 2003).

Plaintiff acknowledges that he was given notice of his hearing, was permitted to submit a written statement detailing his defense to the charges against him and was provided with a written explanation of the disciplinary committee's finding of guilt. He challenges defendants' decision to deny him the opportunity to call and question adverse witnesses and the sufficiency of the evidence used to find him guilty.

Although the Supreme Court held in Wolff, 418 U.S. at 556, that inmates facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so would not be unduly hazardous to institutional safety or correctional goals, the Court noted that although

> [o]rdinarily, the right to present evidence is basic to a fair hearing; the unrestricted right to call witnesses from the prison population carries obvious potential for disruption and for interference with the swift punishment that in individual cases may be essential to carrying out the correctional program of the institution.

Wolff made clear that the right to call witnesses is circumscribed by the "mutual

accommodation between institutional needs and objectives and the provisions of the Constitution." Id. The Court was "careful to distinguish between this limited right to call witnesses and other due process rights at disciplinary hearings," noting that, in comparison to the right to call witnesses, confrontation and cross-examination might well present greater hazards to institutional interests. Baxter v. Palmigiano, 425 U.S. 308, 321 (1976). Plaintiff acknowledges that each of the witnesses he wished to call was adverse and was located at another institution. Furthermore, he concedes that defendant Sutton submitted a brief statement in advance of the hearing, affirming the details alleged in the conduct report. In light of these facts, plaintiff has not stated a claim that his due process rights were denied by his inability to question adverse witnesses at his disciplinary hearing.

Plaintiff contends that defendants Sutton and Spangler violated his due process rights when they found him guilty in the absence of any evidence. Procedural due process demands that the findings of a prison disciplinary board have the support of "some evidence in the record." Hill, 472 U.S. at 454. This is a lenient standard, requiring no more than "a modicum of evidence." Webb v. Anderson, 224 F.3d 649, 652 (7th Cir. 2000). In reviewing a decision for some evidence, courts "are not required to conduct an examination of the entire record, independently assess witness credibility, or weigh the evidence, but only determine whether the prison disciplinary board's decision to revoke good time credits has some factual basis." McPherson v. McBride, 188 F.3d 784, 786 (7th Cir. 1999) (citing Hill,

472 U.S. at 456).

Even if the court assumes, as the state court concluded, that the disciplinary committee based its decision on wholly unreliable evidence, plaintiff's claim still fails. Due process was satisfied when the state court concluded that plaintiff's due process rights had been violated. To understand why this is so, it is important to remember the liberty interest implicated in this case. Although plaintiff remained in segregation while his appeal was pending, he had no constitutionally protected interest in avoiding the sensory deprivations that accompanied placement in segregation. Sandin, 515 U.S. at 484-86. Rather, he had an interest in avoiding the extension of his sentence under § 302.11(2)(b). When the circuit court reversed and vacated the findings of the disciplinary committee on certiorari review, it undid any potential damage caused by plaintiff's placement in segregation and thereby gave him the process he was due under the Fourteenth Amendment. Plaintiff was afforded due process; the fact that the process came after the disciplinary hearing is legally irrelevant. Therefore, because plaintiff has failed to allege facts from which an inference may be drawn that his due process rights were violated, he will be denied leave to proceed on his claim that defendants Sutton and Spangler found him guilty of conduct report 1485488 without providing him constitutionally adequate procedures.

C. Conduct Report 1485488

Plaintiff contends that his due process rights were violated when defendant Morris deliberately falsified evidence used against him in connection with conduct report 1485488. Because a guard's use of false evidence does not violate procedural due process per se and because the circuit court's certiorari review corrected any errors that may have been made at the disciplinary hearing, plaintiff has failed to state a claim upon which relief can be granted with respect to defendant Morris's alleged use of false evidence.

The Court of Appeals for the Seventh Circuit has held that the procedures accompanying a prison disciplinary proceeding are themselves constitutionally adequate safeguards against the arbitrary actions of prison officials. McPherson v. McBride, 188 F.3d 784, 787 (7th Cir. 1999); McKinney v. Meese, 831 F.2d 738, 733 (7th Cir. 1987). Consequently, if an inmate is entitled to due process in connection with a disciplinary hearing, so long as the hearing itself provides procedural due process, an allegation that a prison guard offered false evidence or false reports in order to implicate an inmate in a disciplinary infraction does not state a claim for which relief can be granted. Hanrahan v. Lane, 747 F.2d 1137, 1141 (7th Cir. 1984). Because plaintiff was given due process in connection with his disciplinary hearing, he has failed to state a claim against defendant Morris. Therefore, plaintiff will be denied leave to proceed on his claim that defendant Morris violated his due process rights when he falsified evidence against plaintiff in connection with conduct report 1485488.

ORDER

IT IS ORDERED that

1. Plaintiff Todd Lagerstrom may proceed against defendant Kingston on his claim that he was transferred to the Wisconsin Secure Program Facility without due process in violation of the Fourteenth Amendment

2. Plaintiff's request for leave to proceed in forma pauperis is DENIED for plaintiff's failure to state a claim upon which relief may be granted with respect to his claims that his due process rights were violated when defendants Sutton and Spangler found him guilty of conduct report number 1485488 and when defendant Morris falsified evidence against him.

3. Defendants Sutton, Spangler and Morris are DISMISSED from this case.

4. Plaintiff is responsible for serving his complaint upon defendant Kingston. A memorandum describing the procedure to be followed in serving a complaint on individuals in a federal lawsuit is attached to this order, along with a copy of plaintiff's complaint and blank waiver of service of summons forms.

5. For the remainder of this lawsuit, plaintiff must send defendant Kingston a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on

the court's copy that plaintiff has sent a copy to defendant or to defendant's attorney.

6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 27th day of December, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge