

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

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DWAYNE ALMOND, #238829-A,

Plaintiff,

v.

JAMES E. DOYLE, RICK RAEMISCH,  
WILLIAM POLLARD, PETE ERICKSEN,  
LT. SWIEKATOWSKI, CAPT. LESATZ,  
OFFICER SIEVERT and SGT. HURT,

Defendants.  
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ORDER

09-cv-335-bbc

Plaintiff Dwayne Almond, a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin, has submitted a proposed complaint, a request for leave to proceed in forma pauperis and a motion for preliminary injunctive relief. Plaintiff's complaint contains two claims: (1) he was denied access to the courts in a previous case and (2) he was denied medical treatment. Plaintiff's request to proceed in forma pauperis on his first claim will be denied because plaintiff does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g). I will dismiss plaintiff's second claim without prejudice for plaintiff's failure to comply with Fed. R. Civ. P. 8.

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, plaintiff has brought actions that were dismissed because they were frivolous, malicious or failed to state a claim upon which relief may be granted.

Almond v. State of Wisconsin, 06-C-447-C, decided August 23, 2006; Almond v. State of Wisconsin, 06-C-448-C, decided August 23, 2006; and Almond v. State of Wisconsin, 06-C-449-C decided August 24, 2006. Thus, he must prepay the filing fee for this lawsuit unless his complaint alleges that he is in imminent danger of serious physical injury.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a prisoner must allege a physical injury that is imminent or occurring at the time the complaint is filed and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (citing Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003); Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002)). Ordinarily, claims of physical injury arise in the context of lawsuits alleging Eighth Amendment violations.

In his complaint, plaintiff alleges that on February 15, 2009, defendants Pete Ericksen and Lt. Swiekatowski stopped his outgoing legal mail to Hon. William F. Griesbach. This mail contained evidence in his case in the Eastern District of Wisconsin (case no. 08-C-546), in which he had claimed denial of medical care for chronic back pain while he was in the

Green Bay Correctional Institution from March 2006 through July 2008. Judge Griesbach granted defendants' motion for summary judgment in case no. 08-C-546 on March 26, 2009.

Plaintiff appears to be claiming that he was denied access to the courts in that case. However, he does not allege facts from which an inference may be drawn that he is in imminent danger of serious physical injury as a result of any action by defendants, because no past interference with his mail has anything to do with a current denial of medical care. He cannot proceed in forma pauperis on this claim under § 1915(g).

Plaintiff's second claim seems to relate to a current denial of adequate medical care. He summarizes past allegations of denial of medical care for chronic back pain that he raised in case no. 08-C-546 and adds allegations that he has written defendants James Doyle and Rick Raemisch, telling them that he is being denied medical care for a groin infection that causes him pain and is life-threatening. However, because plaintiff's claim is so lacking in specifics, I conclude that it violates Fed. R. Civ. P. 8, which requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." One of the purposes of Rule 8 is to give each defendant fair notice of the claim alleged against him or her. EEOC v. Concentra Health Services, Inc., 469 F.3d 773, 776 (7th Cir. 2007) ("[T]he complaint must describe the claim in sufficient detail to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.") Plaintiff does not allege that he requested medical treatment for his condition or that any of the named defendants denied him medical treatment for his condition. Without such allegations, defendants would be unable

to understand what it is they are being accused of doing or failing to do and they could not defend themselves.

Given the defects in plaintiff's claims, he has several choices to make.

1. He may proceed on his access to the courts claim if he pays the full \$350 filing fee. Plaintiff may have until August 10, 2009 to advise the court whether he wishes to proceed on this claim, in which case he must enclose a check or money order made payable to the clerk of court in the amount of \$350. Should plaintiff not make the \$350 payment by August 10, 2009, I will assume that he does not want to pursue his access to the courts claim and I will dismiss it without prejudice.

2. He may be able to proceed in forma pauperis on his denial of medical care claim if he can show he is in imminent danger *and* he amends his complaint to comply with Rule 8. He may have until August 10, 2009 in which to file an amended complaint concerning the denial of medical treatment. When amending his complaint, he should include enough specific detail about his claim to allow a person reading the complaint to answer the following questions:

- What are the *facts* that form the basis for plaintiff's claim? (It is not enough for plaintiff to allege that he was denied medical treatment; he must allege that he asked for the medical care and that a defendant was deliberately indifferent to his request.)
- What did each defendant do that makes him or her liable for violating plaintiff's rights?
- When did each incident occur?

- How was plaintiff injured by a particular defendant's conduct?

Once plaintiff has complied with the requirements for amendment, I will screen his complaint under 28 U.S.C. §§ 1915 or 1915A and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. This screening will occur even if plaintiff pays the full filing fee. I will also address plaintiff's motion for a preliminary injunction at that time.

3. If plaintiff is allowed to proceed on his denial of medical care claim, he will still have to pay the full filing fee to proceed on his access to the courts claim.

4. Also, to allow the court to determine whether plaintiff qualifies for in forma pauperis status on his medical care claim, he should submit a trust account statement for the six months preceding the filing of his complaint.

## ORDER

IT IS ORDERED that:

1. Plaintiff Dwayne Almond's request for leave to proceed in forma pauperis on his access to the courts claim is DENIED because plaintiff is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g) on that claim.

2. Plaintiff may have until August 10, 2009 to advise the court whether he wishes to (1) proceed with both his access to the courts and denial of medical care claims and submit the full filing fee of \$350; or (2) proceed only with his claim regarding denial of medical care, at which

point his access to the courts claim will be dismissed. If plaintiff chooses to proceed only on his denial of medical care claim, he must submit an amended complaint that complies with Fed. R. Civ. P. 8 *and* a trust account statement for the six months preceding the filing of his complaint no later than August 10, 2009. If plaintiff fails to respond to this order by August 10, 2009, I will assume that he does not wish to proceed on either of his claims and his case will be dismissed.

Entered this 22<sup>nd</sup> day of July, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge