

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

LONNIE L. JACKSON,

Plaintiff,

v.

RICK RAEMISCH, STEVEN CASPERSON,
JUDY P. SMITH, TIM PIERCE, JENNIFER
DELAUEX, J. SMITH, J. TABAR, J. HIBBARD,
Correctional Officer MEITZ, Correctional
Officer EHNANT, K. SCHELFHOUT, RANDY J.
SPRANGERS, Correctional Officer KELLER,
Lt. H. KUSTER, THOMAS EDWARDS,
RN WENDY C., Dr. MURPHY, Lt. TONY,
Lt. DOMAN, JOHN DOE CORRECTIONAL
STAFF, JAMES GREER, Dr. DAVID BENNETT,
Dr. SUMNICHT and BELINDA SCRUBBE,

Defendants.

OPINION and ORDER

10-cv-212-slc¹

In this prisoner civil rights lawsuit brought under 42 U.S.C. § 1983, plaintiff Lonnie L. Jackson is suing various prison officials for their alleged violations of his constitutional rights. Plaintiff is a prisoner requesting leave to proceed in forma pauperis, so under 28

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

U.S.C. § 1915, the court must screen his complaint and dismiss any claims if they are frivolous, malicious, fail to state a claim or seek monetary relief from a defendant who is immune. 28 U.S.C. § 1915A(b). Because plaintiff has made his initial partial payment, his complaint is ready for screening under 28 U.S.C. § 1915. However, it is not possible to screen the complaint yet because the different claims plaintiff has brought cannot be joined in a single lawsuit under Fed. R. Civ. P. 20. Plaintiff will be given an opportunity to pick which group of claims (or “lawsuit”) he wishes to pursue in this lawsuit, which of the remaining groups of claims he wishes to assert in a separate lawsuit and which groups he will dismiss.

As an initial matter, plaintiff has moved for appointment of counsel and made a reasonable effort to find a lawyer on his own without any success, as required under Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). However, under Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007), a court must consider both the complexity of the case and the plaintiff’s ability to litigate it when deciding whether to appoint counsel. At this early stage, nothing about this case or plaintiff’s ability to litigate it suggests that the court should appoint counsel. With respect to complexity of the case, as explained below, the case will not be as plaintiff envisions it because not all his claims can proceed in a single lawsuit. More important, however, it is simply too early to decide whether this case will be complex or simple. Until the court has screened plaintiff’s allegations, it cannot decide whether the

case will be complex and in what ways. Moreover, although plaintiff complains that he has “limited knowledge of the law,” he identifies no basis to think that he will not be able to handle his case competently. After plaintiff’s complaint is screened, a preliminary pretrial conference will be scheduled and plaintiff will be given detailed instructions about how to use discovery techniques available to all litigants under the Federal Rules of Civil Procedure and will receive the court’s procedures for filing or opposing dispositive motions and calling witnesses. In sum, at this early stage I conclude that plaintiff has not shown that he is incapable of prosecuting this case on his own in light of its complexity. His motion for appointment of counsel will be denied without prejudice to his refiling it at a later date.

As for the required screening, as explained above, it will have to wait because plaintiff is asserting too many different claims in the same lawsuit. Fed. R. Civ. P. 20(a) governs the number of parties a plaintiff may join in any one action. It provides that multiple defendants may be sued together when the injuries each defendant allegedly caused plaintiff arise out of “the same transaction, occurrence, or series of transactions or occurrences” and there is “any question of law or fact common to all defendants.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); 3A Moore's Federal Practice ¶ 20.06, at 2036-2045 (2d ed. 1978). Generally, under Rule 20 a plaintiff may not bring a single lawsuit against different defendants for different incidents. After Rule 20 is satisfied, the plaintiff may add claims against one or more of the properly joined defendants, so long as the additional claims do

not involve new defendants outside that group. Fed. R. Civ. P. 18.

After reviewing the allegations in plaintiff's complaint, I conclude that his claims must be grouped into the following lawsuits:

1. In Lawsuit #1, plaintiff may pursue his claim that defendant K. Schelfhout "harassed" plaintiff about his medical conditions.
2. In Lawsuit #2, plaintiff may pursue his claims that
 - a. defendants Randy J. Spranger, J. Smith, J. Jaber, Correctional Officer Meitzen, J. Hibbard and H. Kuster used excessive force against plaintiff when placing him in temporary lockup;
 - b. in connection with taking plaintiff to temporary lockup, defendant Spranger also deprived plaintiff of his property without due process of the law;
 - c. defendant Tim Pierce never responded to plaintiff's complaints about the alleged excessive force;
 - d. defendant Correctional Officer Ehnant performed an illegal strip search on plaintiff and defendant Kuster allowed the search to be performed (plaintiff also mentions a "defendant" Doug Demotts, but no such defendant is named in the caption);
 - e. Defendant RN Wendy C. failed to provide plaintiff with adequate medical care for his injured wrist and leg after the excessive force incident;
 - f. defendant Spranger violated plaintiff's equal protection rights by treating him more severely during the excessive force incident because of his race and sexual orientation; and
 - g. defendant Spranger used the force he did against plaintiff in retaliation for plaintiff's speaking to an officer about the prison's rules.

3. In Lawsuit #3, plaintiff may pursue his claims that
 - a. defendants Doman and unnamed prison staff violated plaintiff's due process rights by failing to give him a fair hearing in connection with charges he received related to the excessive force incident;
 - b. defendant Judy P. Smith upheld the allegedly unfair hearing; and
 - c. defendant Doman violated plaintiff's due process rights by placing plaintiff on control segregation status for the second excessive force incident.
4. In Lawsuit #4, plaintiff may pursue his claim that unnamed prison staff took plaintiff's glasses and failed to provide plaintiff with adequate cell conditions while plaintiff was in temporary lockup.
5. In Lawsuit #5, plaintiff may pursue his claims that
 - a. defendants Thomas Edwards and Lt. Tony and an unnamed housing sergeant of the segregation unit failed to provide adequate medical treatment for chest pains (petitioner also mentions a "defendant Captain Keller" but he is not named as a defendant); and
 - b. an unnamed housing sergeant of the segregation unit used excessive force against plaintiff when applying a restraint belt to allow plaintiff to see a nurse about his chest pains
6. In Lawsuit #6, plaintiff may pursue his claims that
 - a. defendants Dr. Murphy and Wendy C. failed to treat plaintiff for his hearing loss and itching and rashes while he was in segregation; and
 - b. after plaintiff was transferred to the Waupun Correctional Institution, defendants Sumnich and Belinda Schrubbe failed to treat plaintiff for his hearing loss and itching and rashes.

(Although plaintiff describes the actions of a “defendant Sgt. C. Dequaine,” no such defendant is named in the caption of the complaint. Moreover, not all defendants named are mentioned in the complaint.)

Because plaintiff’s complaint includes claims that cannot proceed in a single lawsuit, plaintiff will have to decide which of the lawsuits mentioned above he wants to pursue in this case. He may do so by submitting a response that describes the claims he wishes to pursue using the numbers I use to describe the lawsuits in the list above (## 1-6). If plaintiff chooses to pursue more than one lawsuit, he should explain which one he wants to pursue under this case number. The remaining lawsuits that he chooses to pursue will be assigned separate case numbers. Plaintiff will have to pay an additional initial partial payment for each additional lawsuit he chooses to pursue. For any lawsuit he dismisses voluntarily, he will not owe a filing fee.

Plaintiff should be aware that because it is not clear at this time which of his separate lawsuits he will pursue, I have not undertaken a full screening of the merits of the claims raised in any of the lawsuits identified above. Once plaintiff identifies the suits he wants to continue to litigate and pays any additional filing fees, I will screen the individual actions that remain, as required under 28 U.S.C. § 1915(e)(2). In addition, plaintiff should know that he could earn a strike for any lawsuit he pursues if any claims in that suit are dismissed for one of the reasons set out in 28 U.S.C. § 1915(g).

ORDER

IT IS ORDERED that

1. The motion for appointment of counsel filed by plaintiff Lonnie L. Jackson, dkt. #5, is DENIED.

2. Plaintiff may have until July 2, 2010, in which to identify for the court the separately numbered lawsuit identified in the body of this opinion on which he wishes to proceed under the number assigned to this case. Plaintiff's initial partial payment will be applied to this lawsuit.

3. Plaintiff may have until July 2, 2010, in which to advise the court which of the remaining separately numbered lawsuits he will prosecute, if any, and which he will withdraw voluntarily.

4. For each additional lawsuit that plaintiff advises the court he intends to prosecute he will owe a separate filing fee and will be assessed an initial partial payment.

5. For any lawsuit that plaintiff dismisses voluntarily, he will not owe a filing fee.

6. If, by July 2, 2010, plaintiff fails to respond to this order, I will enter an order

dismissing the lawsuit as it presently exists for plaintiff's failure to prosecute.

Entered this 11th day of June, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge