

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

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LEIGHTON D. LINDSEY,

Plaintiff,

v.

ORDER

10-cv-385-bbc

GREGORY TRATTLES, JOSEPH CHICANOWICZ,  
JAMES KUPTKE, JOANNE LANE,  
BRIAN NEUMAIER, KATRINA DAVISON,  
DYLON RADTKE, STEVE KETORKUS,  
RYAN TABIASZ, Warden GREG GRAMS,  
Captain SALTZER, C.O. FRANS, RYAN ARMSON,  
and PATRICK HOOPER,

Defendants.  
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In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Leighton Lindsey contends that several correctional officers and prison staff members at the Columbia Correctional Institution violated his constitutional rights by subjecting him to excessive force, sexual assault and unconstitutional conditions of confinement, denying him medical care, throwing away his personal papers, filing false conduct reports against him and transferring him to the Wisconsin Secure Program Facility without appropriate review. Plaintiff is proceeding under the in forma pauperis statute, 28

U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

After reviewing plaintiff's complaint, I conclude that it violates Fed. R. Civ. P. 20, which does not allow the joinder of a number of defendants in one suit unless the claims asserted against the defendants arise out of the same occurrence or series of occurrences. Accordingly, I will reserve ruling on the merits of his remaining claims until he remedies the Rule 20 violations.

## ALLEGATIONS OF FACT

### A. The Parties

Plaintiff Leighton Dwight Lindsey is an inmate at the Wisconsin Secure Program Facility (WSPF) in Boscobel, Wisconsin. Before his transfer to WSPF, plaintiff was incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. Defendant Greg Grams is Warden of the Columbia Correctional Institution. The remaining defendants

were employed at the Columbia Correctional Institution while plaintiff was housed there. Defendants Ryan Armson, Joseph Chicanowicz, Ryan Tabiasz, Patrick Hooper, Gregory Trattles and C.O. Frans were correctional officers. Defendant Dylan Radtke was the segregation programs captain. Defendants Steve Ketorkus and Brian Neumaier work in the health services unit. Defendants Joanne Lane, Katrina Davison, Captain Saltzer and James Kuptke also worked at the facility.

B. January 2010 “Control Status”

On January 16, 2010, defendant Katrina Davison falsely accused plaintiff of yelling and banging on doors. Plaintiff was placed on “control status.” On January 19, Dr. Tracy Johnson reported to defendant Davison that plaintiff acted inappropriately and Davison placed plaintiff on control status again. On January 20, defendant Joanne Lane placed plaintiff on control status for refusing to remain in a cell that was covered with blood, feces and urine. Plaintiff did not have adequate clothing, heat or hygiene products while on control status.

C. January 28, 2010 Incident

Defendant Greg Grams has a policy that allows officers to beat inmates. On January 28, 2010, defendants Ryan Armson and Joseph Chicanowicz were transporting plaintiff to

his cell. Plaintiff was told that “if [he] wanted [his] eyes [he] better not look at Connie Wasson.” Plaintiff responded with vulgarity and Chicanowicz shoved plaintiff into Armson. Chicanowicz and Armson then pushed plaintiff around a corner, out of view of the camera, and banged his head against the wall. Defendants threw plaintiff down the stairs, choked him, banged his head against the wall and floors and kneed him. Defendants took plaintiff to the observation area, where his clothes were cut off and he was searched. A correctional officer ran his hand between plaintiff’s buttocks and found a toothbrush.

Defendant Captain Salzer directed defendants Armson and Chicanowicz to take plaintiff to the kitchen, where a nurse was waiting to check his injuries. Plaintiff complained that Armson and Chicanowicz should not be escorting him because they were the cause of his injuries. In response to plaintiff’s complaints, Captain Salzer told Armson and Chicanowicz to “take [plaintiff] down.” Plaintiff was thrown to the floor, kneed in his torso and choked. He was then transferred to observation.

On February 2, 2010, plaintiff requested medical assistance for injuries and pain. Defendant Steve Ketorkus came to see plaintiff, but did not check all of the injuries plaintiff reported.

#### D. Access to Medical Care

On February 18, 2010, nurse Dorcy passed plaintiff’s cell on medical rounds.

Plaintiff told Dorcy that he had put in medical requests but had not been seen. Dorcy told plaintiff to write another request and he would be seen the next day. Plaintiff was not seen by the health services unit the next day.

On February 22, 2010, plaintiff had an “appointment.” Defendant Brian Neumaier came to plaintiff’s cell and asked him if he wanted to go to his appointment. Plaintiff said yes, and Neumaier told plaintiff to “get ready.” Neumaier left and never came back.

On February 24, 2010, plaintiff spoke to defendant Dylan Radtke about staff interference with his appointments. Plaintiff told Radtke he needed to see a doctor for his knees, but Radtke responded that that was not his department.

On February 26, 2010, Dr. Saline drained fluid from plaintiff’s knee and gave him ibuprofen. Plaintiff complained to health services unit about his pain. Plaintiff received notes from health services unit saying he was scheduled for an appointment.

#### E. Cell Search

Defendants James Kuptke, Patrick Hooper and Greg Trattles searched plaintiff’s cell while he was in the shower. After the search, they came to plaintiff in the shower and asked him where his asthma container was. Plaintiff told defendants that he threw it away and Kuptke told plaintiff he was being placed in control status so they could search his room again. While searching his room, defendants threw away personal papers of plaintiff’s,

including his notice of injury claim and a few complaints.

#### F. Defendant Frans

While plaintiff was incarcerated at the Columbia Correctional Institution, defendant Frans found plaintiff guilty of altering a toothbrush, even though there was nothing wrong with the toothbrush. During the hearing regarding the alleged toothbrush alteration, Frans repeatedly interrupted plaintiff and his witnesses and told plaintiff he was “nothing.”

#### G. Transfer to Wisconsin Secure Program Facility

On March 12, 2010, plaintiff was transferred to the Wisconsin Secure Program Facility in Boscobel, Wisconsin. He asked crisis worker Jody Sharpe, who evaluated him for transfer, why he did not have a hearing with the prison review committee. She told him that defendant Ryan Tabiasz evaluated him on February 22, 2010 and that Tabiasz reported that plaintiff wanted to go to WSPF. Also, Mike Marshall had reported that plaintiff waived his prison review committee hearing. Plaintiff told Sharpe that he had never spoken to Mike Marshall and did not waive his prison review committee hearing.

Plaintiff wrote to prison review coordinator Ms. Croeing about being transferred. Croeing told plaintiff to file a complaint.

## DISCUSSION

Plaintiff is asserting several claims against several defendants. However, asserting all of these claims in the same lawsuits is prohibited by Fed. R. Civ. P. 20. Under Rule 20, plaintiff may not include separate claims against different defendants or sets of defendants in the same lawsuit. The rule prohibits a plaintiff from joining many defendants in a single action unless the plaintiff asserts at least one claim for relief against each defendant that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

Although Fed. R. Civ. P. 18 allows a party to join unrelated claims against defendants in a suit, this rule applies only after the requirements for joinder of parties have been satisfied under Rule 20. Intercon Research Assn., Ltd. v. Dresser Ind., Inc., 696 F.2d 53, 57 (7th Cir. 1983) (quoting 7 Charles Alan Wright, Federal Practice & Procedure). This means that the core set of allowable defendants must be determined under Rule 20 before a plaintiff may join additional unrelated claims against one or more of those defendants under Rule 18. Applying Rules 18 and 20 to the factual allegations in the complaint, I conclude that plaintiff is raising claims that belong in as many as seven different lawsuits:

- Lawsuit #1: On January 16 and 19, 2010, defendant Katrina Davison placed plaintiff on control status without justification. Plaintiff did not have adequate clothing, heat or hygiene products while on control status.

- Lawsuit #2: On January 20, 2010, defendant Joanne Lane placed plaintiff on control status without justification. Plaintiff did not have adequate clothing, heat or hygiene products while on control status.
- Lawsuit #3: Defendant Greg Grams has a policy that allows officers to beat inmates. On January 28, 2010, defendants Ryan Armson and Joseph Chicanowicz used excessive force against plaintiff when they were transporting him to his cell and later, defendant Captain Salzer told Armson and Chicanowicz to “take plaintiff down.” Defendant Steve Ketorkus refused to check all of plaintiff’s injuries that resulted from the January 28, 2010 incident.
- Lawsuit #4: Between February 18 and 26, 2010, plaintiff attempted to get medical attention. Defendants Brian Neumaier and Dylon Radtke failed to respond to plaintiff’s requests for medical treatment.
- Lawsuit #5: Defendants James Kuptke, correctional officers Patrick Hooper and Greg Trattles searched plaintiff’s cell and threw away some of plaintiff’s papers.
- Lawsuit #6: Defendant Frans found plaintiff guilty of altering a toothbrush, even though there was nothing wrong with the toothbrush. During the hearing regarding the alleged toothbrush alteration, Frans repeatedly interrupted plaintiff and his witnesses and told plaintiff he was “nothing.”
- Lawsuit #7: On March 12, 2010, plaintiff was transferred to the Wisconsin Secure Program Facility on the recommendation of defendant Ryan Tabiasz, who reported that plaintiff wished to be transferred.

These separate lawsuits involve claims that do not arise out of the same series of transactions or occurrences and do not include the same defendants or subset of defendants as the other claims. Thus, the claims cannot proceed in a single lawsuit and plaintiff will have to decide which claims to pursue. He may do so by submitting a response that



identifies which numbered lawsuit he wishes to pursue. If plaintiff elects to pursue multiple lawsuits, he should explain which one he wants to pursue under this case number. The remaining lawsuits will be assigned separate case numbers, and plaintiff will be required to pay an initial partial filing fee for each of those lawsuits (and will ultimately be responsible for the full \$350 filing fee). If plaintiff chooses to dismiss the other lawsuits voluntarily, he will not be obligated to pay the \$350 for the other lawsuits. In addition, a lawsuit dismissed voluntarily would be dismissed without prejudice, allowing plaintiff to bring it at another time.

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 or determined whether they comply with Fed. R. Civ. P. 8. Once plaintiff identifies the suit or suits he wants to continue to litigate, I will screen the individual actions that remain as required under 28 U.S.C. § 1915(e)(2). Because plaintiff faces filing fees and potential strikes for each lawsuit he pursues, he should consider carefully the merit and relative importance of each of his potential lawsuits when choosing which of them he wishes to pursue.

ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey may have until August 24, 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.

2. Plaintiff may have until August 24, 2010, in which to advise the court whether he will prosecute the remaining lawsuits or whether he wishes to withdraw them voluntarily.

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

4. For each lawsuit that plaintiff advises the court he intends to prosecute (other than the one plaintiff chooses to keep assigned to this case number), he will owe a separate \$350 filing fee and will be assessed an initial partial payment.

5. If plaintiff fails to respond to this order by August 24, 2010, I will enter an order dismissing the lawsuit as it presently exists for plaintiff's failure to prosecute.

Entered this 12th day of August, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge