

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

BATTITES WESLEY,

Plaintiff,

ORDER

v.

GREG GRAMS, CAPT. ASHWORTH
CAPT. WINSLOW STANLEY,

10-cv-459-slc

Defendants.

On February 15, 2011, the court allowed Wesley to proceed *in forma pauperis* on his claims that defendants Captain Ashworth, Captain Winslow Stanley and Greg Grams violated his First Amendment rights. Wesley has moved for reconsideration, seeking: (1) To reinstate his official capacity claim against Rick Raemisch as the secretary of the Wisconsin Department of Corrections, and (2) To proceed on a Fourteenth Amendment due process claim.

First, Wesley argues that the court should have allowed him to proceed against defendant Raemisch in his official capacity to ensure that Wesley actually is able to obtain any injunctive relief to which he may be entitled. Wesley no longer is in the defendants' custody, but he remains in the custody of the Department of Corrections. Therefore, the Secretary of the Department of Corrections, who is now Gary Hamblin, will be added as a defendant to ensure that Wesley may obtain injunctive relief if he prevails on his claims.

Second, Wesley argues that, because defendants punished him for conduct that they previously had approved, his due process rights were violated. Due process is violated if a rule is so vague that it fails to provide notice of what is prohibited. *See Rios v. Lane*, 812 F. 2d 1032, 1038 (7th Cir. 1987). In this case, although the regulation prohibited unofficial

contact with staff, § DOC 303.26, Wesley had been allowed to have staff person Alwin on his visitor list in the past and had been allowed to have contact with her. Therefore, Wesley could have believed that his contact with this particular staff person was not prohibited. The court will allow Wesley to proceed on this due process claim against the defendants

ORDER

IT IS ORDERED that:

- (1) Plaintiff Battites Wesley's motion to reconsider, dkt. 9, is GRANTED;
- (2) Plaintiff's request to add Gary Hamblin in his official capacity as the Secretary of the Department of Corrections is GRANTED; and
- (3) Plaintiff's request to proceed on his Fourteenth Amendment due process claim is GRANTED.

Entered this 25th day of May, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge