IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHAN GILLIS,

Plaintiff, ORDER

v. 10-cv-509-bbc

RICK RAEMISCH, WARDEN GRAMS
and JUDGE RICHARD G. NIESS,

Defendants.

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In this lawsuit, plaintiff Nathan Gillis, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, alleged that he was given a higher security level in prison and given "numerous clinical recommendations" because his original judgment of conviction erroneously included a habitual criminal enhancer. In a January 10, 2011 order, I dismissed plaintiff's claims that defendant Richard Niess signed an incorrect judgment of conviction, failed to correct the judgment for four years and failed to order prison officials to correct his prison records after the judgment was corrected because Niess has absolute immunity from liability for his judicial acts. In addition, I dismissed plaintiff's amended complaint under

Fed. R. Civ. P. 8 as it pertained to defendants Warden Grams and Rick Raemisch because it failed to provide any details of how their alleged actions changed his conditions of confinement, which would be necessary to sustain a due process claim against them.

Now plaintiff has filed a second amended complaint as well as a motion for the court to reconsider Niess's dismissal from the case. In addition, plaintiff has filed a motion seeking a final judgment regarding Niess. After considering plaintiff's submissions, I will deny his motions for reconsideration and for partial final judgment. Also, I will dismiss his amended complaint because it violates Rule 8, but give him a final chance to submit more detailed allegations.

MOTION FOR RECONSIDERATION

Plaintiff has filed a motion for reconsideration of the part of the January 10, 2011 order dismissing defendant Niess, saying that he is entitled to sue Niess in his "individual/personal capacities" because "the 11th Amendment does not forbid suing state officials for damages in their individual capacities, and for declaratory or injunctive relief in their official capacities." What plaintiff misunderstands is that the doctrine of judicial immunity generally forbids suits for money damages against judges even though the Eleventh Amendment may permit suits against state officials. Mireles v. Waco, 502 U.S. 9 (1991). Moreover, I do not understand plaintiff to be bringing claims for injunctive or declaratory

relief against Niess; plaintiff seeks injunctive relief removing the habitual criminal enhancer from prison records, but this is a remedy that would be granted against prison officials, not Niess. Accordingly, I will deny plaintiff's motion for reconsideration.

MOTION FOR FINAL JUDGMENT

Next, plaintiff has filed a motion seeking a partial final judgment as to defendant Niess. Fed. R. Civ. P. 54(b) provides in pertinent part:

> [W]hen multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however, designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The purpose of Rule 54(b) is to avoid "piecemeal disposal of litigation." Advisory Comm. Notes. Under this rule, a judge has the power to enter final judgment whenever there are multiple parties following an order that finally resolves a party's liability even though the case continues in the district court between the other parties.

As a general rule, however, the court of appeals frowns on the entry of partial final judgments, Doe v. City of Chicago, 360 F.3d 667, 673 (7th Cir. 2004) (judge has power to

enter final judgment under Rule 54(b), but not duty), unless the order to be appealed from finally resolves a party's entire liability. Entering a partial final judgment requires a court to determine that no just reason for delay exists. Fed. R. Civ. P. 54(b). One "just reason" can be the need to develop a factual basis for disputed questions of law, id.; another may be to relieve the court of appeals of the need to familiarize itself with the factual and legal issues of a case more than once. Here, the latter reason applies. Plaintiff's underlying claims against defendants Niess, Grams and Raemisch are intertwined; he claims that all three defendants ignored him when he discovered that his judgment of conviction was erroneous, and then all three defendants failed to do anything after plaintiff pointed out that his prison records were not changed when his judgment of conviction was corrected. Plaintiff would have to limit his present appeal to his claims against Niess alone. This means that if the court of appeals ultimately ended up hearing two separate appeals, one regarding Niess and the other regarding Grams and Raemisch, the court of appeals might be required to go over the same issues twice. Because the entry of judgment with respect to plaintiff's claims against defendant Niess will likely lead to piecemeal appeals that will require the court of appeals to review the same factual record more than once, I will not enter judgment pursuant to Rule 54(b) on plaintiff's claims against Niess.

Given that I have denied plaintiff's motions for reconsideration and for entry of partial final judgment, it is unclear how he wishes to proceed. In his motion for partial final judgment, plaintiff states that he seeks "a final judgment dismissing Niess; and that [he] be

allowed to seek an interlocutory appeal." Plaintiff seems to be combining the concepts of appealing from a partial final order and pursuing an interlocutory appeal from a non-final order, even though the process for appealing a partial final judgment is different from the process for proceeding on an appeal from an interlocutory order.

At this time, I do not understand plaintiff to be asking me to certify that an interlocutory appeal can be taken from the portion of this order denying his motion to reconsider the dismissal of defendant Niess. If this is how plaintiff would like to proceed, he may file a notice of appeal from this order. Also, he should either submit a $455 filing fee for the appeal or request leave to proceed on appeal in forma pauperis. In making his decision, plaintiff should be aware that the standard for granting a motion to certify that an interlocutory appeal can be taken is not an easy one to meet. Plaintiff will have to show that the issues he is appealing "involve[] a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. §1292(b). To assist plaintiff, I am attaching an appeal information form to this order.

SECOND AMENDED COMPLAINT

In a January 10, 2011 order, I dismissed plaintiff's amended complaint under Fed. R. Civ. P. 8 as it pertained to defendants Warden Grams and Rick Raemisch because it failed to provide any details of how their alleged actions changed his conditions of confinement,

which would be necessary to sustain a due process claim against them. Now plaintiff submitted an amended complaint, which contains the following allegations.

A. Allegations of Fact

In 1993, plaintiff Nathan Gillis was convicted on a charge of kidnapping or confining without consent. The judgment of conviction did not include a habitual criminal enhancer. In 2006, defendant Judge Richard Niess revoked plaintiff's probation. After this, the judgment of conviction erroneously showed a habitual criminal enhancer. Plaintiff repeatedly attempted to alert Niess, defendant Warden Grams and defendant Rick Raemisch, then secretary of the Wisconsin Department of Corrections, to the error, but they largely ignored him. Grams told plaintiff that the court had never ordered him to correct the prison documents containing this error.

On May 5, 2010, the judgment of conviction was amended to remove the erroneous criminal enhancer. However, plaintiff's prison records continue to include the enhancer. Defendants Grams and Raemisch continue to refuse to correct plaintiff's records. As a result of this erroneous information, plaintiff has been in segregation for the last three years and has been denied parole. Plaintiff "believes a lower security [level] would have allowed [him] to pursue freedom/release from prison sooner." Plaintiff has been told "CCI-Clinical can make any recommendations according to the federal law."

B. Discussion

A procedural due process claim against government officials requires proof of inadequate procedures as well as interference with a liberty or property interest. Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In the January 10 order, I dismissed plaintiff's original complaint because plaintiff's allegations were too vague to tell whether plaintiff's "higher security level" or "numerous clinical recommendations" could implicate a liberty interest. Now plaintiff has responded by stating that he has been placed in segregation for the last three years, denied parole and told that "CCI-Clinical can make any recommendations according to the federal law."

Unfortunately, these allegations remain extremely vague, making it impossible to determine whether plaintiff has a due process claim. For instance, plaintiff does not explain what type of segregation he is in (administrative or disciplinary), his conditions of confinement there or why he was placed in segregation (purely because of the enhancer, because he committed a disciplinary infraction or some other reason). Plaintiff states that he was told that "CCI-Clinical can make any recommendations according to the federal law," but he does not explain what this means—perhaps it is that clinical staff have used the enhancer in making decisions about plaintiff's placement in segregation or a clinical program, but he does not say whether this is so.

Plaintiff's claim that he was denied parole is similarly vague. He states that he was

"denied parole" but then that he "believes a lower security [level] would have allowed [him] to pursue freedom/release from prison sooner." Plaintiff does not explain whether he has been denied parole at an actual parole hearing or whether he is being denied the opportunity to seek parole because of the enhancer.

Accordingly, I will dismiss plaintiff's amended complaint under Rule 8 and give plaintiff a final chance to provide more detailed factual allegations about what has happened to him in prison because of the erroneous habitual criminal enhancer. Plaintiff will have until March 28, 2011 to submit a second amended complaint providing more details about the problems discussed above. He should try to present his allegations as if he were explaining the events that happened to him to someone who knows nothing about the case. Should plaintiff's new amended complaint fail again to make out allegations that satisfy Rule 8, I will dismiss his claims with prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Nathan Gillis's motion for reconsideration of the portion of the court's January 13, 2011 order dismissing defendant Richard Niess from the case, dkt. #7, is DENIED.

2. Plaintiff's motion for partial final judgment on his claims against defendant Niess, dkt. #8, is DENIED.

3. Plaintiff's amended complaint, dkt. #9, is DISMISSED pursuant to Fed. R. Civ. P. 8.

4. Plaintiff may have until March 28, 2011 to file an amended complaint that complies with Fed. R. Civ. P. 8, by explaining exactly what happened to him because of the criminal enhancer that should not have happened or what did not happen that should have and name each person who made it happen or kept it from happening and describe what each one did or did not do.

Entered this 7th day of March, 2011.

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