

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

MICHAEL SCOTT,

Plaintiff,

v.

ORDER

11-cv-90-bbc

COUNTY CORRECTIONAL FACILITY
CENTRAL/SHERIFF'S DP.,¹
LORRAINE MCCABE, NEAL CONLEY,
SCOTT PELOWSKI, PAUL THOMPSON,
MARLYN TINSLEY and MICHAEL KOCH,

Defendants.

In this civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Michael Scott alleges that members of the Milwaukee County Sheriff's Office violated his due process rights under the Fourteenth Amendment by lying about an incident at the Milwaukee County Courthouse in which plaintiff injured his elbow. Also, plaintiff has filed a motion for appointment of counsel.

¹ The court inadvertently omitted this defendant from the case caption in earlier orders, but I restore it for purposes of issuing this order.

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 screening the complaint, I conclude that plaintiff fails to state a claim upon which relief can be granted. Therefore, I will dismiss the case and deny plaintiff's motion for appointment of counsel as moot.

In his complaint and attached exhibits, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Michael Scott is incarcerated at the Columbia Correctional Institution. Defendants Lorraine McCabe, Neal Conley, Michael Koch, Scott Pelowski, Paul Thompson and Marlyn Tinsley work for the Milwaukee County Sheriff's Office; McCabe is a captain in the internal affairs division, Koch and Thompson are sergeants and Conley, Pelowski and Tinsley are deputies. On January 14, 2010, defendants Conley, Koch, Pelowski and Thompson brought plaintiff to a court hearing in a wheelchair. Defendant Tinsley was located at the deputy's desk inside the courtroom when plaintiff was wheeled in. Plaintiff's

elbow was injured on the way to the hearing. (Plaintiff's complaint is not entirely clear but it seems that his elbow hit a doorframe as he was being wheeled through a doorway.) Plaintiff complained about his injury, pointing to his arm in the presence of the defendants. Plaintiff's attorney for the hearing took a picture of the injury.

After plaintiff complained about the incident, the sheriff's department investigated it. Defendants Conley, Koch, Pelowski, Thompson and Tinsley submitted statements for the investigation. Each defendant present in the courtroom stated that he or she did not see plaintiff suffer an injury or hear plaintiff complain about the injury. However, each recalled seeing plaintiff's lawyer take a picture of plaintiff's arm. On March 19, 2010, defendant McCabe informed plaintiff's lawyer that plaintiff's allegations "were looked into" but that none of the officers saw plaintiff suffer an injury or complain about an injury. On August 24, 2010, plaintiff filed a complaint with the internal affairs division of the sheriff's department, alleging that defendants filed "in-consistent reports" about the incident.

DISCUSSION

A. Proper Defendants

At the outset, I note that plaintiff is unclear about the precise contours of his due process claim. He seems to be arguing that defendants Conley, Koch, Pelowski, Thompson and Tinsley violated his right to due process by providing false statements to internal affairs

indicating that they did not see plaintiff complain about his arm injury.

As for the other defendants, plaintiff's only allegation regarding defendant McCabe is that she informed plaintiff's lawyer that none of the defendants saw plaintiff's injury. Because plaintiff does not allege that McCabe interfered with the process plaintiff was due, I will dismiss her from the case. Also, plaintiff names "County Correctional Facility Central/Sheriff's DP." as a defendant. However, neither the correctional facility nor the Milwaukee County Sheriff's Office is a suable entity; the correctional facility is a building incapable of accepting service of the complaint, and a sheriff's department "is not a legal entity separable from the county government which it serves and is therefore, not subject to suit." Whiting v. Marathon County Sheriff's Department, 382 F.3d 700, 704 (7th Cir.2004) (citing Buchanan v. City of Kenosha, 57 F. Supp. 2d 675 678-79 (E.D. Wis. 1999)). Therefore, I will dismiss this defendant from the case.

B. Due Process Claim

The Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV. Procedural due process claims are analyzed in two steps: first, the court must determine whether the plaintiff was deprived of a constitutionally protected life, liberty or property interest; and second, it must consider what process is due in the context of the deprivation that occurred.

Ledford v. Sullivan, 105 F.3d 354, 356 (7th Cir. 1997).

Even assuming that plaintiff's allegations against defendants Conley, Koch, Pelowski, Thompson and Tinsley are true, the mere fact that these defendants lied about what they saw in the courtroom does not violate plaintiff's due process rights. Plaintiff must also show that he was deprived of a liberty or property interest. I understand plaintiff to be claiming that defendants deprived him of the chance to be compensated by the Sheriff's Office for the January 14, 2010 incident by lying about what they saw. (In his August 24, 2010 complaint to the department, he asked for \$350,000 as compensation for defendants' "in-consistent reports.")

After considering plaintiff's allegations, I conclude that he fails to state a claim upon which relief may be granted. It seems highly dubious that plaintiff would have a property interest in the outcome of the sheriff's department's internal investigation. If he is saying that he sought compensation for his injuries in his original complaint to the department (he does not attach that complaint to his pleading in this case), he provides no reason to think that the sheriff's department has the power to adjudicate his rights, which is necessary for his due process rights to attach. SEC v. Jerry T. O'Brien, Inc., 467 U.S. 735, 742 (1984) (When administrative agency conducts investigation, due process rights are not implicated "because an administrative investigation adjudicates no legal rights."); Trentadue v. Integrity Committee, 501 F.3d 1215, 1237 (10th Cir. 2007) (brother of deceased inmate had no due

process rights in administrative investigation of inmate's death.). Moreover, even if the department *could* adjudicate his claims, plaintiff has not alleged that the department rejected his August 24, 2010 complaint about the alleged lies, so it is unclear whether the department even actually harmed plaintiff by issuing an adverse final decision.

Finally, I note that aggrieved parties usually exercise their due process rights on disputes concerning police misconduct by filing a lawsuit. Plaintiff is no different; he previously filed a civil action in this court regarding the January 14, 2010 incident, but I dismissed the case because plaintiff's allegations did not support his claims of excessive force or failure to treat a serious medical need. Scott v. McCabe, 10-cv-138-bbc (W.D. Wis. Apr. 27, 2010). He remains free to file a lawsuit in state court to pursue state law claims such as negligence or battery.

C. Motion for Appointment of Counsel

Plaintiff has also filed a motion for appointment of counsel. However, because I am dismissing the case for plaintiff's failure to state a claim, I will deny his motion for appointment of counsel as moot.

ORDER

IT IS ORDERED that

1. Plaintiff Michael Scott is DENIED leave to proceed on his claims that defendants Lorraine McCabe, Neal Conley, Michael Koch, Scott Pelowski, Paul Thompson and Marlyn Tinsley violated plaintiff's due process rights during an internal investigation. This lawsuit is DISMISSED for plaintiff's failure to state a claim upon which relief may be granted against any of the defendants.

2. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at the Columbia Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

3. Plaintiff's motion for appointment of counsel, dkt. #23, is DENIED as moot.

4. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 8th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge