IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DWAYNE ALMOND,

Plaintiff, ORDER

v. 12-cv-100-bbc

WILLIAM POLLARD, Warden, DR. MOLLI ROLLI, M.D.,
DR. CALLISTER, (JOHN DOE), DR. NETSON, (JOHN DOE),
STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS,
MATHEW FRANK, Secretary, WAUPUN CORRECTIONAL
INSTITUTION EMPLOYEES,

Defendants.

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Plaintiff Dwayne Almond, an inmate at the Waupun Correctional Institution, brings this lawsuit contending that Department of Corrections staff have violated his Eighth Amendment rights by failing to treat his mental illness. In a May 29, 2012 order, I told plaintiff that his complaint violated Fed. R. Civ. P. 8 because it did not explain how any of the defendants named in the complaint acted with deliberate indifference toward him and I directed him to file an amended complaint setting forth his claims in more detail.

Now plaintiff has responded to the May 29 order, filing an amended complaint stating that defendants William Pollard (Warden, Waupun prison), Molli Rolli (supervisor of Department of Corrections psychiatrists), Dr. Callister and Dr. Netson (prison doctors originally identified as "John Doe" defendants) are ignoring plaintiff's requests to be treated

for paranoid schizophrenia.

Plaintiff has not submitted payment of the $350 filing fee for this case, and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915. However, plaintiff has struck out under 28 U.S.C. § 1915(g). This provision reads as follows:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, plaintiff has brought actions that were dismissed because they were frivolous, malicious or failed to state a claim upon which relief may be granted. Almond v. State of Wisconsin, 06-C-447-C, decided August 23, 2006; Almond v. State of Wisconsin, 06-C-448-C, decided August 23, 2006; and Almond v. State of Wisconsin, 06-C-449-C, decided August 24, 2006. Therefore, he cannot proceed in this case unless I find that he has alleged that he is in imminent danger of serious physical injury.

To meet the imminent danger requirement of 28 U.S.C. § 1915(g), a prisoner must allege a physical injury that is imminent or occurring at the time the complaint is filed and show that the threat or prison condition causing the physical injury is real and proximate. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (citing Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003); Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002)). In his complaint, plaintiff alleges that he is not being treated for paranoid-type schizophrenia. He hears voices, suffers chronic "distressful mental pains" and has been driven to eat his own

feces.

If this were the first time plaintiff had submitted such allegations to the court, his claims would suffice to meet the imminent danger standard. However, I dismissed identical claims that he made against defendants Pollard and Rolli concerning his treatment at the Green Bay Correctional Institution in one of his previous cases in this court, case no. 10-cv-621-bbc (at that time Pollard was warden of the Green Bay prison but has since transferred to Waupun). In the April 7, 2011 order denying plaintiff's motion for preliminary injunctive relief, I stated as follows:

> At the heart of the matter is plaintiff's belief that he suffers from schizophrenia, versus Dr. McQueeney's professional opinion that plaintiff does not suffer from this mental illness. In deciding not to grant the request for Lorazepam, defendant Rolli relied on McQueeney's opinion as well as other factors, such as plaintiff's substance abuse problems, which made the addictive Lorazepam a poor choice for him. Plaintiff disagrees about whether he has schizophrenia, and notes that he has had a diagnosis of this illness previously, but the fact that McQueeney and Rolli disagree with his prior diagnosis does not sustain a deliberate indifference claim. Gutierrez v. Peters, 111 F.3d at 1374 (7th Cir. 1997). . . .
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> . . . plaintiff does not explain what Warden Pollard was in position to do about McQueeney's or defendant Rolli's treatment decisions. This is not a case in which medical professionals have abandoned their duty to treat a plaintiff; rather, medical professionals considered plaintiff's symptoms and concluded that he does not suffer from schizophrenia. It seems readily apparent that it is not Pollard's job to overturn diagnoses of medical professionals. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) (prison officials "entitled to relegate to the prison's medical staff the provision of good medical care").

Almond v. Pollard, No. 10-cv-621-bbc, at 5-6 (W.D. Wis. Apr. 7, 2011). Along the same lines, I stated as follows in the October 24, 2011 order granting summary judgment to defendants:

> [Plaintiff's medical records] show that doctors disagreed about whether plaintiff has schizophrenia, and that [Dr.] McQueeney originally diagnosed schizoaffective disorder in 2006 but then changed his mind in January 2010 after noting that previous tests suggested that plaintiff was malingering.
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> Unfortunately for plaintiff, he continues to rely almost exclusively on these past diagnoses without explaining why defendant Rolli acted with deliberate indifference. But it is not enough for plaintiff to show that he was once diagnosed with schizophrenia; McQueeney and defendant Rolli disagreed with previous diagnoses of schizophrenia, but this disagreement does not sustain a deliberate indifference claim. Gutierrez v. Peters, 111 F.3d at 1374 (7th Cir. 1997). . . .
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> . . . . Even crediting plaintiff's exceptionally vague proposed finding that Pollard "looked on" while he suffered, plaintiff fails to show how Pollard could have been personally responsible for plaintiff's medical care. High ranking officials may not be held liable under 42 U.S.C. § 1983 simply because they supervise other employees who treat prisoners. Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise.") Plaintiff concedes that Pollard did not serve as a reviewer at any stage of the grievance process, so there is nothing backing his assertion that Pollard had "the last words . . .of authority" on his inmate complaint. It is undisputed that Pollard cannot order clinical care or treatment; it follows that he cannot overturn the diagnoses made by medical professionals. Id. at 595 (prison officials "entitled to relegate to the prison's medical staff the provision of good medical care").

Almond v. Pollard, No. 10-cv-621-bbc, at 5-7 (W.D. Wis. Oct. 24, 2011).

Thus, I have already concluded that medical staff at the Green Bay prison were not deliberately indifferent to plaintiff. Plaintiff's current claims, brought just months later, are virtually identical save for the fact that he has now been moved to the Waupun Correctional Institution. In the face of the evidence adduced in case no. 10-cv-621-bbc, plaintiff's allegations about his identical treatment at the Waupun prison does not suffice to show that he is imminent danger. Cf. Almond v. Pollard, 443 Fed. App'x 198, 201 (7th Cir. 2011)

(district court should not credit plaintiff's assertion of imminent danger in making in forma pauperis determination on appeal after "abundance of evidence" at summary judgment showed plaintiff's medical condition was not ignored).

Usually when a plaintiff does not qualify to proceed in forma pauperis because his claims do not meet the imminent danger standard, the court gives the plaintiff a chance to pay the entire $350 filing fee and pursue the case as a paying litigant. There is no reason to do so in this case because, for the same reasons discussed in case no. 10-cv-621-bbc, plaintiff's allegations cannot sustain a claim for deliberate indifference against defendants. Regardless whether plaintiff can pay the filing fee for this case, he fails to state a claim upon which relief can be granted. Accordingly, I will dismiss the case without allowing plaintiff an opportunity to proceed as a paying litigant. (He will still be required to pay the filing fee for this case in installments, deducted from his trust fund account.)

Finally, I note that plaintiff has filed a "motion for . . . speedy trial" and motion for ruling on this case, dkts. ##13, 14. Those motions will be denied as moot.

ORDER

IT IS ORDERED that

1. Plaintiff Dwayne Almond's motion for leave to proceed in forma pauperis in this case, dkt. #1, is DENIED because plaintiff fails to qualify under the imminent danger standard of 28 U.S.C. § 1915(g).

2. This case is DISMISSED with prejudice for failure to state a claim upon which

relief can be granted.

3. Plaintiff's motions "for . . . speedy trial" and motion for ruling on this case, dkts. ##13, 14, are DENIED as moot.

4. 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 Waupun Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 20th day of August, 2012.

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