IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

ALFREDO VEGA,

Plaintiff,

v.

WILLIAM POLLARD,

Defendant.

ORDER

12-cv-155-bbc

On June 19, 2012, I dismissed plaintiff Alfredo Vega's proposed complaint against defendant William Pollard for failure to state a claim that defendant had denied him procedural due process protections during his prison disciplinary hearing. Dkt. #10. Now before the court are plaintiff's motion for reconsideration and his amended motion for reconsideration. Dkt. ##12 and 16. I am construing the motion for reconsideration as a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). Ho v. Taflove, 648 F.3d 489, 495 nn.4-5 (7th Cir. 2011) (construing motion for reconsideration filed within 28 days of judgment as Rule 59(e) motion). Because the amended motion raises new allegations not contained in the original complaint, I will construe it as a motion to reopen the case and a request for leave to amend the complaint. Taylor v. Wexford Health Sources, Inc., 2012 WL 627751, *1 (7th Cir. Feb. 28, 2012) (unpublished) (construing motion to reopen as Rule 59(e) motion). I am denying both motions for the reasons stated below.

DISCUSSION

The purpose of a Rule 59 motion is to bring to the court's attention newly discovered evidence or a manifest error of law or fact. Bordelon v. Chicago School Reform Board of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case, Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003), or as an opportunity for a party to submit evidence that could have been presented earlier. Dal Pozzo v. Basic Machinery Co., 463 F.3d 609, 615 (7th Cir. 2006) (citing Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995)).

In his first motion, plaintiff merely repeats the contention he raised in his complaint that restitution was an improper punishment because he was found not guilty of the disciplinary charge of lying. As I explained in the screening order, even though plaintiff was not found guilty of lying, restitution was an appropriate penalty for the other two charges of which he was found guilty: disobeying orders and attempting to misuse prescription medication. Wis. Admin. Code § DOC 303.72(5) (hearing officer may impose restitution for medical bills); § 303.68(1) (hearing officer has discretion to impose restitution in addition to or in lieu of any other penalty). Plaintiff's motion will be denied because he has not shown that this court relied on a manifest error of law or fact in dismissing his complaint.

In his amended motion, plaintiff states that he can show that restitution "should not apply in this case since it [isn't] . . . ordered for other inmates who commit the same and/or similar violations." Because plaintiff did not make this allegation in his complaint, it was

not error to fail to consider it. To the extent that plaintiff's motion may be considered a motion to reopen his case and amend his complaint, that motion also will be denied.

Plaintiff's new allegation indicates that he is attempting to raise a claim under the equal protection clause of the Fourteenth Amendment, which guarantees that "all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985); see also May v. Sheahan, 226 F.3d 876, 882 (7th Cir. 2000) (holding same in prison context). Equal protection claims typically involve a government action or rule that draws a distinction using a suspect class, such as race, alienage or national origin, or that denies a fundamental right. Srail v. Village of Lisle, Illinois, 588 F.3d 940, 943 (7th Cir. 2009). In this case, plaintiff is alleging that he was improperly singled out for discriminatory treatment but does not allege that it was because of his membership in a suspect class. This type of claim is referred to as a "class of one" claim and requires that the plaintiff be "singled out arbitrarily, without rational basis, for unfair treatment." Abcarian v. McDonald, 617 F.3d 931, 938 (7th Cir. 2010).

The United States Supreme Court has found that class-of-one equal protection claims are not cognizable where the state action by its nature "involve[s] discretionary decision-making based on a vast array of subjective, individualized assessments." Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591, 603 (2008); see also Abcarian, 617 F.3d at 939 (interpreting Enquist to stand for proposition that "inherently subjective discretionary governmental decisions may be immune from class-of-one claims."); United States v. Moore, 543 F.3d 891, 898-901 (7th Cir. 2008) (no class of one claim for discrimination in decisions

to prosecute). Several courts, including this one, have applied Engquist in the prison context. See, e.g., Alexander v. Lopac, 2011 WL 832248, *2 (N.D. Ill. Mar. 3, 2011) (rejecting claim where plaintiff was not hired for prison job because of disciplinary ticket); Dawson v. Norwood, 2010 WL 2232355, *2 (W.D. Mich. Jun. 1, 2010) ("The class-of-one equal protection theory has no place in the prison context where a prisoner challenges discretionary decisions regarding security classifications and prisoner placement."); Russell v. City of Philadelphia, 2010 WL 2011593, at * 9 (E.D. Pa. May 19, 2010) ("We simply are not prepared to intrude so far into the day-to-day operations of the prison to say that on any given occasion, the prison could have no rational basis for moving a prisoner into administrative segregation or moving a prisoner into a new job."); Upthegrove v. Holm, 2009 WL 1296969, at *1 (W.D. Wis. May 7, 2009) (rejecting claim involving prison official's refusal to allow him to wear jacket in subzero temperatures).

As explained above, Wisconsin has granted hearing officers the discretion to impose restitution in addition to or in lieu of any other penalty. Such subjective, individualized assessments of appropriate disciplinary penalties cannot form the basis of a class-of-one equal protection claim. Because plaintiff cannot state a claim under the Fourteenth Amendment, reopening his case to allow him to amend his complaint would be futile. Therefore, the motion to reopen will be denied.

ORDER

IT IS ORDERED that plaintiff Alfredo Vega's motion for reconsideration and his amended motion for reconsideration dkts. ##12 and 16, are DENIED.

Entered this 11th day of July, 2012.

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