

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

TERRANCE GRISSOM,

Plaintiff,

v.

MICHAEL MEISNER,
Warden, Columbia Correctional Institution,

Defendant.

OPINION and ORDER

12-cv-45-bbc

In this case, plaintiff Terrance Grissom filed a pleading styled as a petition for writ of habeas corpus brought under 28 U.S.C. § 2254, alleging that prison officials sexually assaulted him and failed to treat his mental health problems. Because plaintiff's claims concerned the conditions of his confinement and not the length or duration of his incarceration, the claims were not properly raised in a habeas corpus action. I gave plaintiff a chance to inform the court in writing whether he wanted this case to be treated as a civil action under 42 U.S.C. § 1983, but he failed to respond by the March 22, 2012 deadline. Accordingly, I issued an order on April 16, 2012, dismissing the case.

On April 17, 2012, the court received a response from plaintiff, requesting that the case be reopened as a § 1983 action. Although plaintiff has previously been allowed to proceed in forma pauperis in this action, that determination was made while the case was styled as a habeas proceeding. Because plaintiff has struck out under 28 U.S.C. § 1915(g),

I must reconsider this determination. Section 1915(g) provides:

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 been denied leave to proceed in forma pauperis in lawsuits that were legally frivolous. Grissom v. Rauschenbach, 04-cv-1252 (E.D. Wis. Feb. 9, 2005); Grissom v. Champagne, 04-cv-1251 (E.D. Wis. Feb. 9, 2005), Grissom v. Gordon; 04-cv-1249 (E.D. Wis. Feb. 9, 2005). Now that plaintiff wishes to proceed under § 1983, he has to show that he was in imminent danger of serious physical harm when he filed his complaint. (Plaintiff has since been transferred to a different prison, but he could still proceed with his claims if he was in imminent danger when he filed his complaint. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003.)) In order to do so, the alleged threat or prison condition must be shown to have been real and proximate. Id. at 330 (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002)). In addition, even if I concluded that plaintiff's allegations meet the imminent danger threshold, I would have to screen his complaint under 28 U.S.C. § 1915(e)(2) to determine whether it states a claim upon which relief may be granted.

Unfortunately, plaintiff's current vague allegations are insufficient to allow me to ascertain either whether he was in imminent danger when he filed his complaint or whether he states claims upon which relief may be granted. The only named defendant in this case

is defendant Michael Meisner, warden of the Columbia Correctional Institution. Plaintiff alleges that Meisner was aware that plaintiff had been sexually assaulted and denied mental health treatment, but did nothing to rectify the problems. Plaintiff does not explain whether these problems were ongoing; that is, whether there was just past harm or whether the danger to him was “real and proximate” at the time of filing.

Nor does plaintiff explain defendant’s role in the constitutional violation. Plaintiff states that defendant is the warden and in that position is legally responsible for the welfare of the inmates at the Columbia Correctional Institution. In itself, this is not enough to sustain a claim against the warden. 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.”) In addition, regarding the mental health treatment claim, defendant is entitled to defer to the judgment of medical professionals so long as he did not ignore plaintiff or directly cause him harm. Berry v. Peterman, 604 F.3d 435, 440 (7th Cir. 2010) (“As . . . a host of . . . cases make clear, the law encourages non-medical security and administrative personnel at jails and prisons to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so.”).

Because plaintiff fails to show that he could proceed on his claims if I granted his motion to reopen the case, I will deny his motion. However, the motion will be denied without prejudice. Plaintiff may file a proposed amended complaint that resolves the issues discussed above. I will give plaintiff a short time to do so. If plaintiff can present an

amended complaint showing that he was in imminent danger at the time he filed his complaint and that defendant was personally involved in the constitutional deprivations he alleges, I will reopen the case.

ORDER

IT IS ORDERED that plaintiff Terrance Grissom's motion to reopen this case, dkt. #12, is DENIED without prejudice. Plaintiff may have until July 25, 2012 to submit a proposed amended complaint resolving the issues discussed in the opinion above.

Entered this 11th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge