IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER J. HAMLIN,

OPINION AND ORDER

Plaintiff,

13-cv-202-bbc

v.

CAPTAIN HOLMES, LIEUTENANT WENZEL,
C.O. II BURNS, C.O. II ROSS,
C.O. II MOUNGEY, C.O. BOGUTSKI,
C.O. LOBIANCO and JOHN DOE,

Defendant.

- -

In this proposed civil action under 42 U.S.C. § 1983, plaintiff Christopher J. Hamlin, a prisoner at the Waupun Correctional Institution, contends that defendants violated his rights under the Eighth Amendment in various ways. He alleges that defendants Lieutenant Wenzel and C.O. Bogutski used excessive force against him; defendants Wenzel, C.O. II Burns, C.O. Lobianco and John Doe engaged in an unlawful manual strip search; unknown supervisors knew about Wenzel's tendency to use excessive force and engage in unnecessary manual strip searches but did nothing to protect plaintiff; and defendant C.O. II Moungey deprived plaintiff of adequate clothing and subjected him to unsanitary prison conditions. Plaintiff also alleges that defendants Wenzel and Captain Holmes violated his First Amendment rights by taking and failing to mail a card to plaintiff's grandmother.

Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has

made an initial partial payment. 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 reviewing the complaint, I conclude that plaintiff may proceed on his Eighth Amendment claims for excessive force, the strip search and the conditions of confinement. However, plaintiff has not stated a claim for denial of medical care against any of the defendants or any claim against the John Doe supervisors for violation of his constitutional rights, so he may not proceed on these claims.

In the complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Christopher J. Hamlin is a prisoner confined at the Waupun Correctional Institution, located in Waupun, Wisconsin. Defendant Wenzel is a lieutenant at the Waupun Correctional Institution, and defendants Bogutski, Burns, Lobianco and Moungey are correctional officers. The John Doe defendants include one correctional officer and several "supervisory officials" at the Waupun Correctional Institution.

On January 1, 2013, at approximately 12:30 p.m., defendant Lieutenant Wenzel came to plaintiff's cell and said that plaintiff was being placed in temporary lockup status

on the segregation unit. Plaintiff asked for five minutes to pack his property. After five minutes, plaintiff approached his cell door. Plaintiff gave Wenzel a sealed, stamped card addressed to plaintiff's grandmother. The card was a "beautiful, unique piece of art." Plaintiff asked Wenzel to mail the card and Wenzel assured him that it would be mailed.

Defendant C.O. Bogutski, C.O. Leiber and C.O. Reinke (Leiber and Reinke are not defendants) were also present at plaintiff's cell. Plaintiff stuck his wrists out of the opening behind his back so that the officers could handcuff him. As Bogutski was placing the handcuffs on plaintiff, Wenzel claimed falsely that plaintiff was pulling his hands away. After plaintiff was handcuffed and the door was open, Wenzel told Bogutski, Leiber and Reinke, "We're gonna take him down the back stairs." The "back stairs" to which Wenzel was referring are not monitored by cameras and are outside the view of other staff and prisoners. There was no reason to go down the back stairs.

As they headed to the back stairs, plaintiff said something to a prisoner in another cell, and Wenzel told plaintiff to "stop acting like a child." When plaintiff and the defendants were halfway down the back stairs, Wenzel said "Hold him at the bottom!" As a result, plaintiff was out of sight of other prison staff, prisoners and cameras. At that point, Wenzel removed some pens that plaintiff had in his waistband, asking plaintiff "What's that?" Plaintiff responded, "What do you think they are?" Wenzel later reported falsely that plaintiff replied, "My dick."

After removing the pens, Wenzel put his right hand on plaintiff's neck, pushing against plaintiffs throat, and said, "You need to stop acting like a child." Plaintiff told

Wenzel to remove his hand from plaintiff's neck. Wenzel responded by gripping the back of plaintiff's neck and pushing plaintiff's face into the wall. The impact split open plaintiff's bottom lip and chipped his left canine tooth.

Wenzel then yelled, "Take him down!" Following Wenzel's order, Bogutski and Leiber slammed plaintiff into the concrete floor, causing plaintiff to hit his chin on the floor. Wenzel knelt on plaintiff's right arm just above the elbow. Plaintiff cried, "You're going to break my arm," and Wenzel replied that he did not care.

Reinke called into his radio the code for an altercation between prisoner and staff, causing more officers to arrive on the scene. Wenzel told them to retrieve shackles for plaintiff's legs but to take their time. While they were gone, Wenzel ground his knees into plaintiff's back and arm and said, "This is what happens when you act like a child." Plaintiff never resisted.

Plaintiff began having a panic attack. He has been diagnosed with an anxiety disorder. He told Wenzel that he was unable to breathe, he has bad panic attacks and was having one then. He asked them to stop crowding his head. Wenzel and the other two officers refused his request. Plaintiff had trouble breathing and panicked.

After staff arrived and placed shackles on plaintiff's ankles, he was led to the segregation unit. When plaintiff was brought into the unit, Wenzel ordered plaintiff to kneel, placed a tazer in plaintiff's face, turned it on so plaintiff could see the electric arc and said, "If you move, I'll use this on you." At that point, defendants C.O. II Burns and C.O. II Ross were holding plaintiff's wrists. They both "hyper extended" his wrists, causing the

sharp edges of the handcuffs to cut into his wrists. Another unknown guard (not named as a John Doe defendant) was standing on the chain between the leg shackles, causing the shackles to dig into plaintiff's ankles.

Defendant C.O. Lobianco told plaintiff that he was performing a "staff-assisted strip search." He cut off plaintiff's clothing, lifted his penis, spread his buttocks and felt around his anus. Lobianco "aggressively [and] painfully squeezed his [groin] and tried to push his thumb into [plaintiff's] anus." The defendants did not ask plaintiff whether he would cooperate with a "regular strip search" (by which I assume plaintiff means visual search).

Nurse De May took pictures of the injuries to plaintiff's lip and tooth. Plaintiff did not receive psychological or physical care for his physical injuries or his panic attack.

Plaintiff was given a conduct report. In the report, Wenzel stated falsely that plaintiff lunged at him and precipitate the assault. On the basis of that lie, plaintiff was placed in control segregation status.

In segregation, plaintiff was placed in a "very cold" cell with no clothing. He had no sheets or blankets and the cell had only a vulcanized rubber mat. He was given no soap or toothbrush and fed only "seg loaf." The cell was "contaminated with feces and urine." When other prisoners filed complaints about the "severe inadequacy of the heating" on the wing where plaintiff was housed, they were allowed an extra pair of socks to protect their feet from the cold, but plaintiff was not.

Because of his situation, plaintiff began to psychologically decompensate. He begged defendant C.O. II Moungey and Sergeant Waller (who is not a defendant) for clothing and

soap, but they told plaintiff that he would not be given any clothing and the segregation status might last up to three days. "This caused [plaintiff] to panic and desperately plot to get out of that status by eating the black vulcanized rubber mat to hurt himself and make staff take him to a hospital." Plaintiff began eating the rubber mat. Plaintiff was still not provided with psychological care. Instead, Lieutenant Larson threatened to gas plaintiff if he did not allow staff to remove the rubber mat, so plaintiff complied.

Larson told plaintiff that he would give plaintiff some clothing at 10 p.m. if plaintiff behaved. At 10 p.m., Larson declined to give plaintiff any clothing because Moungey had stated falsely in a log sheet that plaintiff referred to Larson as a "bitch" and "profanely demanded" his clothing. Around 12 a.m., plaintiff was given clothing and a blanket.

At some later time, plaintiff learned that defendant Wenzel had not mailed the card to plaintiff's grandmother. Instead of mailing the card, he gave it to Captain Holmes. Plaintiff wrote to Holmes asking about the card, and Holmes told plaintiff that the card had been destroyed. Holmes said, "I don't care where your card is. Your actions placed you in prison & seg where you are today. Take a good look at yourself. I think your card is the least of your worries."

OPINION

A. Excessive Force

To state a claim of excessive force against a prison official, a plaintiff must allege that the official applied force "maliciously and sadistically for the very purpose of causing harm,"

rather than "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The factors relevant to this determination include such matters as why force was needed, how much force was used, the extent of the injury inflicted, whether defendant perceived a threat to the safety of staff and prisoners and whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321.

Plaintiff alleges that even though he did nothing to threaten the safety of any correctional officers and did not resist, Wenzel slammed plaintiff's face against the wall, Bogutski slammed plaintiff into the ground and Wenzel ground his knees into plaintiff's back and elbow. (Plaintiff alleges that Leiber and Reinke were present during the altercation but has not named them as defendants.) If plaintiff's allegations are true, he may be able to prove that Wenzel and Bogutski applied force for the sole purpose of harming him. Accordingly, I will allow plaintiff to proceed on his excessive force claim against defendants Wenzel and Bogutski.

B. Body Cavity Search

A strip search is almost always uncomfortable and embarrassing for the subject of the search. In the prison context, where inmates are highly sensitive to the vast power differential between them and prison authorities, the sense of vulnerability caused by the search can only be heightened. However, because security is of paramount concern in prison, the privacy rights of prisoners are severely curtailed and officers must have great

discretion in determining what kind of search is appropriate. Florence v. Board of Chosen Freeholders of County of Burlington,132 S.Ct. 1510, 1515-16 (2012) (holding routine visual strip search on intake permitted without particularized suspicion). The Court of Appeals for the Seventh Circuit has explained that searches in prison should be analyzed under the Eighth Amendment and that prison strip searches are lawful unless they are "conducted in a harassing manner intended to humiliate and inflict psychological pain." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003); Fillmore v. Page, 358 F.3d 496, 505 (7th Cir. 2004). Stated another way, the question is whether there was any legitimate penological reason for both the search and its scope. Whitman v. Nesic, 368 F.3d 931, 934 -35 (7th Cir. 2004).

Plaintiff alleges that defendants Wenzel, Ross, Burns and Lobianco did not give him an opportunity to consent to a "regular" strip search before performing a "staff-assisted" search, which I interpret to mean a visual inspection instead of a manual one. In some circumstances failure to allow a prisoner to comply with a visual inspection before conducting a manual inspection could constitute an unreasonable strip search if there was no legitimate penological reason for proceeding directly to the more intrusive manual inspection. Vasquez v. Raemisch, 480 F. Supp. 2d 1120, 1131-32 (W.D. Wis. 2007) (granting leave to proceed on manual strip search where officers did not give plaintiff opportunity to consent to visual search and no allegations indicate legitimate reason preventing visual inspection). In other circumstances, it may not be reasonable to allow a prisoner to comply first, such as when a prisoner has been restrained for legitimate

penological reasons and could not assist staff in performing a visual search. Edwards v. Thurmer, 08-CV-352-BBC, 2008 WL 2953974 (W.D. Wis. July 29, 2008) (denying leave to proceed where prisoner who had been trying to cut himself with razor was restrained with waist, hand and leg restraints and cuffed to a steel door).

In this case, plaintiff had been restrained but, as discussed above, it is not clear from plaintiff's allegations whether there was any good reason for the restraint. It may turn out that the officers had good reason for handcuffing plaintiff in the first place; if so, then a subsequent manual strip search for placement in segregation is not improper. However, there is still some room to doubt whether plaintiff should have been handcuffed, and the benefit of that doubt must go to plaintiff at this very early stage. Therefore, plaintiff may proceed on his theory that defendants Wenzel, Burns and Lobianco performed an illegal search by failing to allow him a chance to assist with a visual inspection.

Plaintiff also states that another unknown correctional officer was standing on the leg chains. Although he has not identified this person as a John Doe defendant, "when the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). In the early stages of this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At that conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed security officer and will set a deadline within which plaintiff

is to amend his complaint to include this unnamed defendant.

C. Conditions of Confinement

The Eighth Amendment requires the government to "provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). Conditions of confinement that expose a prisoner to a substantial risk of serious harm are unconstitutional. Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

To demonstrate that prison conditions violated the Eighth Amendment, a plaintiff must allege facts that satisfy a test involving both an objective and subjective component. Farmer, 511 U.S. at 834. The objective analysis focuses on whether prison conditions were sufficiently serious so that "a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities," id., or "exceeded contemporary bounds of decency of a mature, civilized society." Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994). The subjective component requires an allegation that prison officials acted wantonly and with deliberate indifference to a risk of serious harm to plaintiff. Id. "Deliberate indifference" means that the defendant knew that the plaintiff faced a substantial risk of serious harm and yet disregarded that risk by failing to take reasonable measures to address it. Farmer, 511 U.S. at 847. Thus, it is not enough for plaintiff to prove that a defendant

acted negligently or should have known of the risk. Pierson v. Hartley, 391 F.3d 898 (7th Cir. 2004). He must show that the official received information from which an inference could be drawn that a substantial risk existed and that the official actually drew the inference. Id. at 902.

Although there is no definitive test to determine whether conditions of confinement are cruel and unusual under the Eighth Amendment, the following kinds of alleged conditions have been found to rise to the level of unsanitary conditions: sleeping on a moldy and wet mattress for 59 days, Townsend v. Fuchs, 522 F.3d 765, 773-74 (7th Cir. 2008); a lack of sanitary conditions, including clean bedding, Gillis v. Litscher, 468 F.3d 488, 493-94 (7th Cir. 2006); having to live in a cell with mold and fiberglass in the ventilation ducts, causing plaintiff severe nosebleeds and respiratory problems, Board v. Farnham, 394 F.3d 469, 486 (7th Cir. 2005); having to live for sixteen months in a cell infested with cockroaches that crawled over the prisoner's body, Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996); and confinement in isolation without adequate clothing or bedding, Maxwell v. Mason, 668 F.2d 361, 363 (8th Cir. 1981).

Plaintiff alleges that he was left in a "very cold" cell in segregation with no clothes, bed, sheets or blanket for multiple hours. Plaintiff also alleges that the conditions in his cell posed a substantial risk to his mental health. Although it is not clear how long plaintiff was in the cell with no clothes or how cold the cell was, he has alleged the minimum facts necessary to state a claim upon which relief may be granted. Prisoners have a right to "protection from extreme cold" and taken in combination, the conditions of low cell

temperature, lack of clothing and bedding may establish an Eighth Amendment violation. Dixon v. Godinez, 114 F.3d 640, 642-44 (7th Cir. 1997) (for Eighth Amendment claims based on low cell temperature, courts examine factors such as "the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; as well as whether he must endure other uncomfortable conditions as well as cold").

The remaining question is whether any of the named defendants were deliberately indifferent to these conditions. The only named defendant who engaged in any alleged conduct relevant to plaintiff's conditions of confinement is defendant Moungey. Plaintiff alleges that other prisoners complained about the cold and that plaintiff complained to Mougney about the his lack of clothing but Mougney did nothing. At this early stage in the proceedings, these allegations are sufficient to meet the subjective deliberate indifference component. Accordingly, I will grant plaintiff leave to proceed on his Eighth Amendment conditions of confinement claim against Moungey. At summary judgment, plaintiff must show that Mougney was aware of the cold and unsanitary conditions and failed to take reasonable measures to correct them.

D. Medical Treatment

Plaintiff alleges that he suffered a cut lip, chipped tooth and a panic attack during the incident on January 1, yet he received no medical treatment for this incident. He also alleges that he began panicking again while in segregation. Under the Eighth Amendment, prison

officials have a duty to provide medical care to those being punished by incarceration, Estelle v. Gamble, 429 U.S. 97, 103 (1976), including a right to appropriate mental health treatment. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983). To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a "serious medical need" and that prison officials were "deliberately indifferent" to this need. Estelle, 429 U.S. at 104.

A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, Gutierrez v. Peters, 111 F.3d 1364, 1371-73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 847 (1994). "Deliberate indifference" means that the officials were aware that the prisoner needed medical treatment but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain. Estelle, 429 U.S. at 104-05; Gayton v. McCoy, 593 F.3d 610, 619 (7th Cir. 2010).

Plaintiff alleges that he was denied treatment for his cut lip, chipped tooth and anxiety. Although it is not clear from the complaint whether his cut lip and chipped tooth

were serious medical needs, I need not decide that issue at this point because plaintiff's allegations do not suggest that defendants were deliberately indifferent to these conditions. Guzman v. Sheahan, 495 F.3d 852, 859 (7th Cir. 2007). He has not alleged that any of the named defendants were aware of his cut lip or chipped tooth. In addition, although plaintiff alleges that no one provided him treatment, he alleges that he was seen by Nurse De May, so it would appear that someone tried to obtain treatment for plaintiff after the altercation. Plaintiff alleges that De May did not treat his physical or mental problems, but plaintiff has not named De May as a defendant in this case.

Plaintiff alleges that he told Wenzel about his panic attacks in the middle of their altercation, so he has alleged that Wenzel was aware of a risk of harm to plaintiff. However, a security officer cannot be expected to stop in the middle of a security situation to address a prisoner's panic attack, and plaintiff has not alleged any facts to suggest that his panic disorder placed him at substantial risk of harm once the incident was under control. Plaintiff also allege that he began panicking later because of the conditions in segregation. However, defendant Moungey is the only named defendant about whom plaintiff has made allegations relevant to the conditions of his confinement and plaintiff has not alleged that Mougney was aware of plaintiff's anxiety disorder or any special risk of harm from it.

Because plaintiff has not alleged that any of the named defendants were aware of and disregarded a substantial risk of harm, I will deny him leave to proceed on his claim that he was denied treatment for his cut lip, chipped tooth and anxiety in violation of his rights under the Eighth Amendment.

E. John Doe Supervisors

Plaintiff alleges that the John Doe supervisors "knew of Lt. Wenzel's propensity for using excessive force on and sexually degrading prisoners via 'staff-assisted' strip searches, yet refused to take adequate action to protect" prisoners, including plaintiff. Plaintiff may not proceed on an Eighth Amendment claim against the John Doe defendants on this basis. It is well established that liability under 42 U.S.C. § 1983 must be based on a defendant's personal involvement in the constitutional violation, Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). To be liable, a supervisor must have known of the subordinate's conduct and approved of the conduct and the basis for it. Lanigan v. Village of East Hazel Crest, Illinois, 110 F.3d 467, 477 (7th Cir.1997). "[S]upervisors who are merely negligent in failing to detect and prevent subordinates' misconduct are not liable, because negligence is no longer culpable under § 1983." Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir.1988) (citations omitted).

Plaintiff has not alleged that these John Doe supervisors were involved personally in the alleged conduct in violation of plaintiff's rights or that they knew about them. In fact, the complaint includes no specific facts about these John Doe supervisors, such as how they knew about Wenzel's alleged "propensities." Plaintiff does allege that Wenzel had engaged in one previous improper strip search of another inmate, but he does not allege that Wenzel's supervisors knew about the search or knew that the search was improper. The only thing that plaintiff knows about these John Doe defendants is that they were Wenzel's supervisors, which is not a sufficient basis to allege a constitutional claim.

F. First Amendment

Plaintiff contends that defendants Wenzel and Holmes violated his right to free speech under the First Amendment by taking and then not mailing plaintiff's postcard to his grandmother. Prisoners have protected First Amendment interests in sending and receiving mail. Thornburgh v. Abbott, 490 U.S. 401 (1989); Rowe v. Shake,196 F.3d 778, 782 (7th Cir. 1999). Allegations that a prison delayed and stole mail repeatedly are sufficient to state a claim for violations of free speech. Antonelli v. Sheahan, 81 F.3d 1422, 1431-32 (7th Cir.1996) (prisoner's allegations that legal mail was opened, "delayed for an inordinate period of time" and sometimes stolen stated a First Amendment claim). However, a single, isolated instance of the loss or destruction of outgoing mail does not amount to a violation of an inmate's constitutional rights. Cherry v. Litscher, No. 02-C-71-C, 2002 WL 32350051 (W.D. Wis. Apr. 1, 2002); Bruscino v. Carlson, 654 F. Supp. 609, 618 (S.D. Ill. 1987), aff'd, 854 F. 2d 162 (7th Cir. 1988); Schroeder v. Drankiewicz, 12-2305, 2013 WL 1222750 (7th Cir. Mar. 26, 2013) ("delay of less than two months in sending a *single piece* of personal mail . . . was not an injury of constitutional dimmension") (emphasis in original). Constitutional protection is reserved for those situations in which there is a pattern of interference. Davis v. Goord, 320 F.3d 346, 351 (2d Cir. 2003) ("[A]n isolated incident of mail tampering is usually insufficient to establish a constitutional violation. Rather, the inmate must show that prison officials 'regularly and unjustifiably interfered with the incoming legal mail.'") (citations omitted); Nixon v. Secretary Pennsylvania Dept. of

Corrections, No. 12-2959, 2012 WL 4842257 (3d Cir. Oct. 12, 2012) (holding prisoner's "claim alleging a single, isolated interference with his personal mail was insufficient to constitute a First Amendment violation"). Therefore, I will deny plaintiff leave to proceed on his First Amendment claim.

ORDER

IT IS ORDERED that

1. Plaintiff Christopher Hamlin is GRANTED leave to proceed on the following claims:

(a) defendants Lieutenant Wenzel and C.O. Bogutski used excessive force against plaintiff in violation of the Eighth Amendment;

(b) defendants Wenzel, C.O. II Burns, C.O. II Ross, C.O. Lobianco and John Doe engaged in an unlawful strip search in violation of the Eighth Amendment; and

(c) defendant C.O. Moungey subjected plaintiff to inhumane conditions of confinement in violation of the Eighth Amendment.

2. Plaintiff is DENIED leave to proceed on his remaining claims.

3. Defendants Captain Holmes and John Doe are DISMISSED.

4. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to

answer or otherwise plead to plaintiff's complaint if it accepts service on behalf of the state defendants.

5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve their lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. Plaintiff is obligated to pay the balance of his unpaid filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 1st day of May, 2013.

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