

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

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ROGER DALE GODWIN,

Plaintiff,

v.

JOLINDA WATERMAN, *et al.*,

Defendants.

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OPINION AND ORDER

13-cv-349-wmc

State inmate Roger Dale Godwin has filed this complaint under 42 U.S.C. § 1983, concerning the conditions of his confinement in the Wisconsin Department of Corrections (“WDOC”). Godwin seeks leave to proceed without prepayment of fees and costs. For reasons set forth briefly below, Godwin is denied leave to proceed *in forma pauperis* because (1) he is barred by the three-strikes rule found in 28 U.S.C. § 1915(g); and (2) he has failed to plead facts showing that he is in imminent danger of serious physical harm.<sup>1</sup>

ALLEGATIONS OF FACT

For purposes of this order, the court accepts plaintiff’s well-pleaded allegations as true and assumes the following probative facts:<sup>2</sup>

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<sup>1</sup> The plaintiff here was recently indicted in this district for allegedly sending threatening communications through the mail to other members of the judiciary, including Senior District Judge Barbara Crabb and Magistrate Judge Stephen Crocker. *See United States v. Godwin*, 13-cr-51 (W.D. Wis.) (May 15, 2013). Given that threats were allegedly made against my colleagues in the Western District of Wisconsin, I recused myself from presiding over that criminal case to avoid any appearance of impropriety, but see no basis for recusal here and am confident that I can fairly and impartially consider the pleadings in this civil action.

Since June 2012, Godwin has been in state custody at the Wisconsin Secure Program Facility (“WSPF”) in Boscobel. The defendants are employed as nurses (Jolinda Waterman, Mary Miller, K. Lund, B. Edge) and administrators (Warden Tim Haines, Lori Alsum, David Burnett) at WSPF. Godwin also names one correctional officer (Sergeant Garrett Reynolds) as a defendant.

Godwin has been diagnosed with a gastroenterological disorder known as peptic ulcer disease.<sup>3</sup> Godwin reports that this condition causes him to “throw up dark blood” and have “charcoal dark stools.” As a result, Godwin alleges that he has experienced weakness and weight loss. He also suffers from chronic stomach pain.

Godwin’s pending complaint, which is dated May 16, 2013, acknowledges that he has been receiving regular care and medication from physicians at WSPF. Godwin also has received care from a specialist at the University of Wisconsin Hospital in Madison. As part of his treatment regimen, Godwin has undergone at least four endoscopic tests to monitor his peptic ulcer disease.<sup>4</sup> Godwin is reportedly unable to take aspirin or non-steroidal anti-inflammatory drugs (NSAIDs) for pain because these aggravate his

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<sup>2</sup> In addressing any *pro se* litigant’s complaint, the court must read the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972).

<sup>3</sup> Peptic ulcer disease is one in which raw areas develop in the membranes lining the stomach, lower esophagus or small intestine. AMERICAN MEDICAL ASS’N, COMPLETE MEDICAL ENCYCLOPEDIA 968 (2003). Upper abdominal pain is a common symptom, as is burning pain after meals. *Id.* Other symptoms include nausea, vomiting, loss of appetite and weight. *Id.* Peptic ulcer disease may be caused by a bacterial infection, but other factors, including long-term use of non-steroidal anti-inflammatory drugs (NSAIDs) and heavy alcohol use can also damage the protective lining of the gastrointestinal tract, making it vulnerable to stomach acids. *Id.* Treatment includes antacids, histamine blockers, and drugs that reduce acid secretion. *Id.*

<sup>4</sup> According to Godwin, each test reflected high levels of stomach acid, which aggravate his gastric ulcers.

condition. On April 23, 2013, Godwin was seen by a pain management specialist at UW Hospital.

Godwin's primary complaint is that each of the nurses named and correctional officer Reynolds have denied him narcotic medication (Vicodin) and an anti-psychotic (Elavil) to relieve his gastrointestinal pain on the following occasions:

1. October 7, 2012 (Waterman);
2. October 22, 2012 (Miller);
3. December 3, 2012 (Waterman);
4. March 7, 2013 (Waterman);
5. March 13, 2013 (Edge);
6. April 3, 2013 (Waterman);
7. April 5, 2013 (Reynolds);
8. April 18, 2013 (Edge);
9. May 4, 2013 (Edge);
10. May 7, 2013 (Lund).

Godwin alleges that despite his submitting a request for treatment on each of these dates, he was denied access to adequate care for his pain. Godwin further claims that WSPF administrators Alsum, Burnett and Haines failed to conduct an adequate investigation in response to the grievances he filed concerning the lack of adequate pain medication, as well as failed to intervene on his behalf. Godwin seeks compensatory and punitive damages for the inadequate medical care that he has received.

## OPINION

As an initial matter, Godwin's case is governed by the Prison Litigation Reform Act of 1996 (the "PLRA"). The PLRA requires a court to screen each complaint and dismiss any portion that is 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 them. *See* 28 U.S.C. § 1915A. Once an inmate incurs three "strikes" for filing meritless claims, the PLRA further precludes an inmate from bringing a civil action or appealing a civil judgment *in forma pauperis*, unless he demonstrates that he is in "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

Godwin concedes that at least three of his previous lawsuits have been dismissed as legally frivolous, malicious or failed to state a claim upon which relief may be granted. *Godwin v. Sutton*, 05-cv-493-bbc (W.D. Wis. Sept. 12, 2005); *Godwin v. Bridgewater*, 05-cv-bbc (W.D. Wis. Nov. 7, 2005); and *Godwin v. Frank*, 06-cv-489-bbc (W.D. Wis. Sept. 22, 2006). Accordingly, Godwin may proceed *in forma pauperis* only to the extent that his complaint demonstrates an "imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To demonstrate an imminent danger for purposes of § 1915(g), an inmate must articulate specific facts showing that a "threat" or risk of physical harm is both "real and proximate." *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003). The imminent-danger exception requires the risk of serious physical injury to exist at the time the complaint is filed. *Id.* Thus, allegations of past harm do not fit within the imminent-

danger exception for purposes of proceeding *in forma pauperis*. *Id.* (citing *Abdul-Wadood v. Nathan*, 91 F.3d 1023 (7th Cir. 1996)).

As set forth above, Godwin claims that several nurses and one correctional officer denied his request for Vicodin or Elavil for pain on ten occasions between October 2012 and May 2013. To the extent that Godwin seeks damages for incidents of past harm that are remote in time, his allegations do not demonstrate an imminent danger of serious physical injury. *See Ciarpaglini*, 352 F.3d at 330; *see also Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003).

Although Godwin also contends that he was denied treatment and adequate pain medication on a recurring basis within the past three months, these allegations fall short as well. As an initial matter, Godwin acknowledges that he has been receiving medical care for his condition from physicians at WSPF and from specialists at UW Hospital in Madison throughout the time period pertinent to his complaint. In fact, Godwin acknowledges being seen by a pain management specialist at UW Hospital as late as April 23, 2013. What he does not allege -- indeed what is glaringly absent -- is that *any* of his treating physicians have ever prescribed Vicodin or Elavil to treat his complaints of pain. Accordingly, Godwin does not show that the defendants, who are after all WSPF nurses, correctional officers and administrators, cannot be found to have acted with deliberate indifference in refusing medications his own physicians apparently have refused to prescribe, much less establish that their refusal places him in imminent danger of physical harm.

ORDER

IT IS ORDERED that:

1. Plaintiff Roger Dale Godwin's request for leave to proceed *in forma pauperis* is DENIED.
2. The clerk's office is directed to CLOSE this case for administrative purposes.
3. If Godwin wishes to proceed with his complaint in this case, he must pay the full amount of the filing fee (\$400.00) within thirty days. In the event that Godwin pays the filing fee, his complaint will be subject to further preliminary screening under 28 U.S.C. § 1915A. If he does not pay the fee within 30 days, this case will be dismissed under Fed. R. Civ. P. 41(b).

Entered this 29th day of May, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge