

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

ERICK PETERSON,

Plaintiff,

v.

MICHAEL MEISNER, JANEL NICKEL,
LON BECHER, TIMOTHY CASIANA, BLOUNT,
NATHAN PRESTON, TRACY KOPFHAMER,
BENJAMIN NEUMAIER, SCOTT ROYCE,
TRAVIS HAAG, HAUTAMAKI, MARY LEISER,
DALIA SULIENE, MELISSA THORNE, EMILY,
KAREN ANDERSON, JOANNE LANE,
CINDY FRANCOIS, CINDY O'DONNELL,
DEIRDNE MORGAN, CHARLES COLE,
DENNIS SCHUH, CHARLES FACKTOR,
DENNIS RICHARDS, and ALEXANDER AGNEW,

OPINION & ORDER

15-cv-49-jdp

Defendants.

Pro se plaintiff Erick Peterson is a prisoner in the custody of the Wisconsin Department of Corrections currently housed at the Green Bay Correctional Institution. On May 4, 2016, I granted plaintiff leave to proceed on many of his claims against various defendants. Dkt. 9, at 15. But I identified problems with two of his claims under Federal Rule of Civil Procedure 8: plaintiff had not fully stated an Eighth Amendment claim concerning his cell conditions or a Fourteenth Amendment claim concerning due process violations at his second disciplinary hearing. I allowed plaintiff leave to supplement his complaint with additional allegations.

Plaintiff has filed a supplemental complaint. Dkt. 17. After reviewing plaintiff's supplemental allegations, I will grant plaintiff leave to proceed on his Eighth Amendment conditions of confinement claim against defendant Timothy Casiana, and on his Fourteenth

Amendment due process claim against defendants Janel Nickel, Blount, Hautamaki, Michael Meisner, Cindy Francois, Charles Facktor, and Cindy O'Donnell. But I will deny plaintiff leave to proceed on his Fourteenth Amendment due process claim against defendant Mary Leiser.

ALLEGATIONS OF FACT

Plaintiff's supplemental complaint discusses many of the same allegations that I recounted in my May 4, 2016, order, Dkt. 9, and I will not repeat them here. Rather, I will discuss only the new allegations that respond to the Rule 8 issues I identified in my previous order.

Plaintiff alleges that following a brutal assault and an unconstitutional strip search, defendant Timothy Casiana, a Columbia Correctional Institution (CCI) captain, ordered that plaintiff be kept in a cell without bedding, clothing, or running water. Dkt. 17, at 9-10. Pursuant to defendant Casiana's orders, plaintiff spent three days in these conditions.

A short time later, defendant Casiana wrote plaintiff up for battery, disobeying orders, and threats. Plaintiff attended a disciplinary hearing and received an unfavorable decision that he promptly appealed, citing due process violations. Plaintiff received a new hearing and a new opportunity to call witnesses and present his defense.

On November 14, 2012, plaintiff filled out a witness list for his second hearing, but defendant Janel Nickel, CCI's security director, denied plaintiff the opportunity to call any witnesses. And plaintiff alleges that his appointed advocate, defendant Mary Leiser, did not investigate the charges against plaintiff, gather evidence, or talk to witnesses. Defendants Blount, a CCI lieutenant, and Hautamaki, a CCI correctional officer, ultimately found

plaintiff guilty. Plaintiff received 360 days of “program segregation” and an “adjustment” that appears to have extended his sentence by 184 days. *Id.* at 15-16. Plaintiff appealed the decision to defendant Michael Meisner, CCI’s warden, and defendant Meisner affirmed the decision.

Plaintiff filed an inmate complaint, stating that his advocate, defendant Leiser, did not gather evidence or produce witnesses for him and complaining that he did not have the opportunity to call witnesses. Defendant Cindy Francois, a complaint examiner, denied the complaint, and defendant Charles Facktor, also a complaint examiner, and defendant Cindy O’Donnell, a DOC secretary, affirmed Francois’s decision.

ANALYSIS

As stated above, I identified two Rule 8 problems with plaintiff’s initial complaint.

First, although plaintiff alleged that prison staff subjected him to unconstitutionally harsh conditions of confinement for several days, plaintiff did not identify *who* subjected him to the conditions. Plaintiff alleged that he was without bedding, clothing, or running water for several days, and I determined that these allegations stated an Eighth Amendment conditions of confinement claim. But I explicitly instructed plaintiff that he needed to tell me who was responsible for the conditions. Plaintiff has done so: he alleges that defendant Casiana was responsible for the allegedly unconstitutional conditions. I will grant plaintiff leave to proceed with his Eighth Amendment conditions of confinement claim against defendant Casiana.

The second Rule 8 issue concerned plaintiff’s Fourteenth Amendment due process claim regarding his disciplinary hearing. In his initial complaint, plaintiff alleged that various

defendants deprived him of due process by preventing him from calling witnesses during his second disciplinary hearing.¹ But plaintiff did not explain what liberty interest he lost as a result of the hearing and whether, as a result, he was entitled to due process protections; “the type of process plaintiff was due depends on the disciplinary consequences he faced.” Dkt. 9, at 13. In his supplemental complaint, plaintiff alleges that as a result of the disciplinary proceedings, 184 days were added to his prison sentence. Inmates are entitled to certain procedural safeguards before prison officials may strip them of good-time credit or otherwise lengthen their sentence. *See Miller v. Duckworth*, 963 F.2d 1002, 1004 (7th Cir. 1992). When such a liberty interest is at stake, inmates are entitled to an opportunity to call witnesses and present evidence at the disciplinary hearing, “when permitting [them] to do so will not be unduly hazardous to institutional safety or correctional goals.” *Id.* (citing *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974)). At this point, plaintiff has implicated a liberty interest sufficient to trigger due process protections, including the right to call witnesses during a disciplinary hearing. I will grant plaintiff leave to proceed on his Fourteenth Amendment due process claim against defendants Nickel, Blount, Hautamaki, Meisner, Francois, Facktor, and O’Donnell, for their respective roles in preventing plaintiff from calling witnesses at the

¹ Because plaintiff received a second hearing, I determined that his first hearing does not give rise to any due process claims:

To the extent that plaintiff attempts to bring due process claims regarding his initial conduct report hearing, I will not allow him to bring claims regarding that hearing because any potential due process violation in that hearing was rectified by prison officials vacating the first decision and holding a new hearing.

Dkt. 9, at 14 n.2.

disciplinary hearing, finding plaintiff guilty after a defective hearing, and affirming the decision.

But I will deny plaintiff leave to proceed on his due process claim against defendant Leiser. As I explained in my previous order, due process does not require prison officials to appoint counsel or a lay advocate to assist inmates during disciplinary hearings unless the inmate is illiterate or where the complexity of the issues makes it nearly impossible for the inmate to respond to the charges on his own. Dkt. 9, at 14 (citing *Wilson-El v. Finnan*, 263 F. App'x 503, 506 (7th Cir. 2008)). I instructed plaintiff to explain why he needed a lay advocate, but he did not include an explanation in his supplemental complaint. Plaintiff has not fixed his Rule 8 problems with respect to his claim concerning defendant Leiser's ineffective assistance, and I will deny plaintiff leave to proceed on this claim.

ORDER

IT IS ORDERED that:

1. Plaintiff Erick Peterson is GRANTED leave to proceed on his Eighth Amendment conditions of confinement claim against defendant Timothy Casiana.
2. Plaintiff is GRANTED leave to proceed on his Fourteenth Amendment due process claim against defendants Janel Nickel, Blount, Hautamaki, Michael Meisner, Cindy Francois, Charles Facktor, and Cindy O'Donnell.
3. The Wisconsin Department of Justice must notify the court as to whether it intends to accept service on behalf of defendants Janel Nickel, Blount, Hautamaki, Cindy Francois, and Cindy O'Donnell.

4. Plaintiff is DENIED leave to proceed against defendant Mary Leiser, and she is DISMISSED from this case.

Entered June 7, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge