

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

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DePRONCE ANTWON BURNETT,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,  
EDWARD F. WALL and DENISE SYMDOM,

Defendants.  
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OPINION AND ORDER

15-cv-488-bbc

Pro se plaintiff DePronce Antwon Burnett has filed a proposed complaint in which he alleges that the Wisconsin Department of Corrections kept him in custody past his mandatory release date. Plaintiff does not say when he was supposed to be released or how long he believes he was held unlawfully, but he alleges that he received an eight-year sentence in 2001 and that defendants failed to credit him for good time and at least some of the time he served before trial. (Although plaintiff is incarcerated now, at the time he filed his complaint, he was housed at the Dane County jail, so I do not understand him to be alleging that he is serving the same sentence identified in the complaint.)

Plaintiff has made an initial partial payment of the filing fee, in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is a prisoner, I must screen his complaint under 28 U.S.C. § 1915A.

Having reviewed the complaint, I conclude that plaintiff may proceed on a claim of

unlawful incarceration under the Eighth Amendment. To prevail on such a claim, plaintiff must prove that defendants knew of a substantial risk that plaintiff was entitled to release, but they consciously failed to take reasonable measures to help him get released. Childress v. Walker, 787 F.3d 433, 439 (7th Cir. 2015) (“A plaintiff states a claim for an Eighth Amendment violation if he is detained in jail for longer than he should have been due to the deliberate indifference of corrections officials.”); Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997) (“deliberate indifference” means that officials are consciously disregarding a substantial risk of serious harm). See also Armato v. Grounds, 766 F.3d 713, 721 (7th Cir. 2014); Campbell v. Peters, 256 F.3d 695, 700 (7th Cir. 2001). Although in the usual situation individuals challenging the validity of their custody must first bring a petition for a writ of habeas corpus, plaintiffs may bring a claim under § 1983 if habeas relief is no longer available. Burd v. Sessler, 702 F.3d 429, 435 (7th Cir. 2012).

In this case, plaintiff alleges that he was incarcerated beyond his mandatory release date, so he has satisfied that aspect of the claim at the pleading stage. Of course, at summary judgment or trial, plaintiff will have to submit specific evidence showing that he was entitled to be released sooner. In addition, plaintiff alleges that he received an eight-year sentence in 2001, so it is reasonable to infer that he is no longer serving that sentence and that habeas relief is not available to him.

The main question raised by plaintiff’s complaint is whether he has sued the correct defendants. State agencies such as the Wisconsin Department of Corrections cannot be sued on a claim for constitutional violations because such agencies are not “persons” within the

meaning of 42 U.S.C. § 1983, which is the statute that authorizes lawsuits for constitutional violations. Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-66 (1989). Accordingly, I am dismissing the complaint as to the department.

Defendant Edward Wall is Secretary of the Wisconsin Department of Corrections and plaintiff says that defendant Denise Symdom is the administrator for the department's Division of Community Corrections. It is not clear whether either of these individuals is responsible for determining a prisoner's release date or if either of them was aware of potential problems with the calculation of plaintiff's release date. If that is not part of their job, they cannot be held liable. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) ("Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job. . . . [P]eople who stay within their roles can get more work done, more effectively, and cannot be hit with damages under § 1983 for not being ombudsmen."). However, it is unlikely that plaintiff has access to more information at this stage that would allow him to show what these defendants knew and what their job responsibilities were. Accordingly, I will allow plaintiff to proceed against defendants Wall and Symdom for the purpose of determining the proper defendants. Cf. Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir.1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendants' identity).

After Magistrate Judge Stephen Crocker holds a preliminary pretrial conference (which is scheduled after the defendants answer the complaint), he will issue an order that gives plaintiff an opportunity to conduct discovery and amend his complaint if he

determines that other officials are responsible for his allegedly unlawful detention. At summary judgment or trial, plaintiff will have to prove each of the following: (1) defendants were aware of a substantial risk that plaintiff was being held unlawfully; (2) it was part of defendants' job to make the determination regarding when a prisoner should be released; and (3) defendants consciously failed to take reasonable measures to help plaintiff get released.

## ORDER

IT IS ORDERED that

1. Plaintiff DePronce Antwon Burnett is GRANTED leave to proceed on his claims that defendants Edward Wall and Denise Symdom were aware of a substantial risk that plaintiff was being detained unlawfully, but they failed to take reasonable measures to help him with his release, in violation of the Eighth Amendment.

2. Plaintiff's complaint is DISMISSED as to the Department of Corrections.

3. Pursuant to 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 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 for the defendants.

4. For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing

the defendants, he should serve the lawyer directly rather than the 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 the defendants or to defendants' attorney.

5. 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.

6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 7th day of October, 2015.

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