

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

MATTHEW L. WALTERS, SR.,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS,
DODGE CORRECTIONAL INSTITUTION CRU,
FOX LAKE CORRECTIONAL INSTITUTION RECORDS,
JULIE JAHN, ASSISTANT RECORDS CUSTODIAN FLCI
and DCI CRU CUSTODIANS,

Defendants.

OPINION and ORDER

16-cv-665-bbc

Pro se plaintiff Matthew L. Walters, Sr. has filed a complaint in which he alleges that Julie Jahn, the records custodian at Fox Lake Correctional Institution, her assistant and several other entities were responsible for plaintiff's incarceration past his proper release date, in violation of the Eighth Amendment. Because plaintiff is a prisoner and has paid the initial filing fee, I must screen his complaint under 28 U.S.C. § 1915A.

A court must construe a pro se litigant's complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed pursuant to 28 U.S.C. § 1915(e)(2). Having reviewed the complaint, I conclude that plaintiff may proceed on a claim of unlawful

incarceration under the Eighth Amendment against defendant Jahn and her assistant. However, I am dismissing the complaint as to the remaining defendants.

Plaintiff's complaint sets forth the following facts, which I will accept as true for purposes of this screening order. Childress v. Walker, 787 F.3d 433, 436 n.1 (7th Cir. 2015).

ALLEGATIONS OF FACT

On June 10, 2015, Julie Jahn and the assistant records custodian at Fox Lake Correctional Institution received an amended judgment of conviction from the Circuit Court for Vilas County, awarding plaintiff 90 days of additional sentence credit. Defendant Jahn forwarded plaintiff a copy of the amended judgment of conviction, along with a note indicating that the sentence credit would not be applied to plaintiff's incarceration, but she did not explain why. Plaintiff was released on October 9, 2015, eighty days beyond the release date required by the amended judgment of conviction.

OPINION

A prisoner's custodian may be liable under the Eighth Amendment when a prisoner is incarcerated beyond the date authorized by state law. Campbell v. Peters, 256 F.3d 695, 700-01 (7th Cir. 2001). 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 443,

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, 256 F.3d at 700. Although the general rule is that prisoners must challenge the validity of their custody with a petition for a writ of habeas corpus, if habeas relief is no longer available and the plaintiff did not have reasonable opportunity to bring a habeas petition, he may bring a claim under § 1983 instead. Burd v. Sessler, 702 F.3d 429, 435 (7th Cir. 2012).

In this case, plaintiff alleges that defendant Jahn and her assistant consciously refused to comply with a trial court order amending his sentence, so he has stated a claim against those two defendants. At summary judgment or trial, plaintiff will have to submit specific evidence showing that the judgment of conviction amended his sentence and that defendant Jahn and her assistant were aware of the order but refused to comply with it. In other words, plaintiff will have to show that defendant Jahn and her assistant’s actions were conscious and deliberate: “[d]eliberate indifference requires more than negligence.” Armato, 766 F.3d at 721.

I note that plaintiff’s complaint discusses defendant Jahn’s assistant only in the context of receiving the amended judgment of conviction. At this point, I will assume that the assistant was involved in implementing the order as well. However, at summary judgment or trial, plaintiff will need to submit evidence showing that the assistant was

personally involved in violating his rights. Kuhn v. Goodlow, 678 F.3d 552, 555-56 (7th Cir. 2012) (“[Section] 1983 liability is premised on the wrongdoer’s personal responsibility.”). In addition, plaintiff will need to show that defendants had the authority and responsibility for calculating plaintiff’s sentence. 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.”).

Although the name of the assistant is unknown, that is not a reason for dismissing plaintiff’s claim. “[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individuals 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 Dept., 95 F.3d 548, 555 (7th Cir. 1996). Plaintiff may therefore proceed against this unnamed defendant until discovery reveals his or her identity. Maclin v. Paulson, 627 F.2d 83, 87 (7th Cir. 1980). After Magistrate Judge Stephen Crocker holds a preliminary pretrial conference (which will be 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.

Plaintiff cannot proceed against the remaining defendants. Liability under § 1983 is limited to those who are “persons” within the meaning of that statute. Because state agencies are not “persons” under § 1983, Will v. Michigan Dept. of State Police, 491 U.S. 58, 66

(1989), they cannot be sued. Therefore, I am dismissing the complaint as to the Wisconsin Department of Corrections.

Plaintiff's claims against "Dodge Correctional Institution CRU" and "Fox Lake Correctional Institution Records" have a different problem. A prison or department in a prison cannot be sued because it cannot accept service of the complaint. Smith v. Knox County Jail, 666 F.3d 1037, 1040 (7th Cir. 2012). Accordingly, I will also dismiss the complaint as to Dodge Correctional Institution CRU and Fox Lake Correctional Institution Records as these prison entities cannot be sued.

Finally, plaintiff also names "DCI CRU custodians" as defendants. It is unclear from the complaint whether these acronyms are a description of defendant Jahn and her assistant or whether plaintiff is attempting to name another group of defendants. To the extent plaintiff is attempting to name another group of defendants, he cannot proceed against them because he does not provide any facts in the complaint about their involvement in allegedly violating his rights. Kuhn, 678 F.3d 552, 555-56 (7th Cir. 2012); Grieverson v. Anderson, 538 F.3d 763, 778 (7th Cir. 2008).

ORDER

IT IS ORDERED that

1. Plaintiff Matthew L. Walters, Sr. is GRANTED leave to proceed on his claims that defendants Julie Jahn and her unnamed assistant 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. Plaintiff may proceed against defendant Jahn's assistant as a John/Jane Doe defendant until his or her identity is established.

2. Plaintiff's complaint is DISMISSED as to the Wisconsin Department of Corrections, Dodge Correctional Institution CRU, Fox Lake Correctional Institution Records and DCI CRU custodians.

3. Pursuant to an informed 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 the 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 29th day of November, 2016.

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