

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

MR. RICKEY TOWNSEND,

Plaintiff,

v.

ORDER

01-C-573-C

THE FEDERAL BUREAU OF PRISONS;
THE FEDERAL CORRECTIONS INSTITUTION,
OXFORD, WI.; CHRISTOPHER ERLEWINE;
FORMER WARDEN PERCY H. PITZER;
WARDEN R. L. STIFF; JAMES WAYMAN;
GREG LISKA; LENNY GRAVES; WADE
RENSTROM; DEB PASKE; DIRK RODGERS;
MIKE MOORE; KEITH O'NEAL; JUDY
(LANGHURST) DEWAR; GARY THOMPSON;
SYLVIA ODOEZ; GERALD ROCCA; THEADOR
EDGECOMB; DIANE RICHTER; GARY DRINKWATER;
TWO JOHN DOE (Control Center Officers at
the Federal Correctional Institution, Oxford, WI.);
THOMAS HAYES PH.D.; MARY ELLEN LUNSTRUM;
ANN B. SHINDELL; ROBERT TOMLINSON;
ARRON PHILLIPS; RICHARD LAABS; BRUCE
BOERCHERT; MIKE KLIWITTER; PHIL CAVES;
MR. ZEUS; RAY STONE; MARVIN THOMPSON;
MRS. BOERCHERT; BILL LUNSTRUM; TOM HUBER;
DAVE SHY; RICHARD LABBS; BILL MAURER;
RANDY WAITE; UNITY HEALTH INSURANCE;
DR. JAMES REED; HESS MEMORIAL HOSPITAL;
MILE BLUFF CLINIC; DAN MANDERS; DR. DAVID
HOFFMANN; SANDY (Dr. David Hoffmann's Nurse
at Mile Bluff Clinic); DR. JAMES LOGAN; DR. LEON

RADANT; DR. KEITH NESS; DR. DAVE METZLER;
DR. JOHN MARSHALL; DR. JAMES MARTIN;
DR. GARY BRIDGEWATER; DR. BACKONJA; DR. TIMOTHY
HINTON; OFFICE OF WORKERS COMPENSATION PROGRAMS
at Chicago and Washington D.C. branch offices; JAMES HILL;
MARY BENTON; MILES MALONEY; MIKE McCALLEY;
STEVE LENTZ; JEANNY TURNER; JAMES GOLD; BOB
FARBER; DEPUTY YOUR; RICHARD STEADTLER;
SCOTT CAMPBELL,

Defendants.

On October 9, 2001, plaintiff Rickey Townsend filed a proposed complaint in this court in which he contends that he has been discriminated against on the basis of his race (African-American) and that defendants have conspired either to kill or harm him because he was a possible witness in a federal criminal proceeding or to cover up the attempt to end his life. Initially, plaintiff requested leave to proceed in forma pauperis in this action and I denied the request because plaintiff did not meet the indigency standards of this court. On October 26, 2001, plaintiff paid the fee for filing his complaint.

Now plaintiff has filed a number of other documents with the court. In one document, he advises the court that he is having difficulty serving his complaint on the defendants because some of them are no longer employees of the Bureau of Prisons, the Office Workers Compensation Program or the Federal Bureau of Investigation, and he does not know where to find them. Plaintiff requests “subpoenas signed by a judge” to force the

Federal Bureau of Prisons and the Office of Personnel Management to reveal the whereabouts of its former employees. He also requests an enlargement of time in which to serve the defendants with his complaint.

Second, plaintiff asks that this court put under seal a cassette tape recording he submitted with his complaint allegedly containing evidence of a conspiracy between the Federal Correctional Institution in Oxford, Wisconsin and “several doctors at the Hess Memorial Hospital and other outside agencies” to conceal an attempt to poison plaintiff on October 11, 1995 and on other “possible occasions.”

Third, plaintiff has submitted a one-page document titled “Amendment,” from which it appears he wishes to add as defendants to his lawsuit Jim Drinkwater, a UNICOR foreman at the Federal Correctional Institution in Oxford, Wisconsin; the Wood County Sheriff’s Department; R.M. Starks, a deputy sheriff of the K-9 unit at the Wood County Sheriff’s Department, Ferrell Gas, a petroleum company in Wisconsin Rapids, Wisconsin; “Henry,” a furnace technician of Ferrell Gas; William D. Mason, a prosecuting attorney in Cuyahoga County, Ohio; and the Wood County Telephone Company.

Fourth, plaintiff has submitted a packet of a photocopied and original papers that appear to be intended either as attachments to plaintiff’s complaint or as evidence to be used at a later date.

Finally, plaintiff has submitted a letter dated January 29, 2002, in which he requests

appointment of counsel to represent him and a court order directing that his “advocate,” Ms. Crystal Gallego, be placed in the United States Witness Protection Program on the ground that she “has had several attempts on her life because she assisted [plaintiff] in filing this [case].”

A close reading of plaintiff’s complaint, together with the documents plaintiff has submitted since filing his complaint, convinces me that plaintiff’s conspiracy claim should be dismissed on the court’s own motion pursuant to 28 U.S.C. § 1915(e)(2) because the claim is legally frivolous. A frivolousness finding is appropriate when the facts alleged are “clearly baseless,” meaning fanciful, fantastic, delusional, irrational, or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992).

Plaintiff’s complaint consists of 83 single-spaced paragraphs of allegations and several hundred pages of exhibits. The centerpiece of plaintiff’s complaint is his claim that in January 1993, when he was an officer at the Federal Correctional Institution in Oxford, Wisconsin, prison officials deliberately housed together two inmates who were known to pose a danger to each other and ignored plaintiff’s requests to have them separated. A short time later, when one of the inmates attempted to murder the other and criminal charges were brought against the inmate aggressor, plaintiff made himself available to testify against the Bureau of Prisons at the criminal trial and at the trial of any civil case the injured inmate might bring. Plaintiff is convinced that because of his willingness to act as a witness against

the Bureau of Prisons, he became the subject of a conspiracy to have him murdered and discredited in his job.

Plaintiff alleges that the first criminal prosecution occurred between November 1993 and January 1994. He was not called as a witness. He alleges in bald and conclusory terms that during this time, staff members conspired with inmates to “threaten and cause him bodily harm.” He does not allege that he was harmed and he does not allege what form the threats took. He alleges also that in December 1994, the Court of Appeals for the Seventh Circuit overturned the inmate’s criminal conviction and granted him a new trial and that in January 1995, the assaulted inmate filed a claim under the Tort Claims Act to recover for the Bureau of Prisons’ alleged failure to protect him from harm.

The new criminal trial was held in June 1995. Plaintiff was put on the defendant’s witness list but was never called to testify. Around this time, plaintiff alleges that “staff” conspired to have him terminated from his job by offering him a trainee position as a cook foreman in the kitchen supervising a far greater number of inmates than a white foreman would have had to supervise. He alleges that an attempt was made to “set [him] up” because he played by prison rules when he refused to allow inmates to take food out of the food service area but witnessed other officers allowing inmates to take food back to their cells to sell and make a profit. Finally, plaintiff alleges that on October 11, 1995, he was “retaliated and discriminated against” when “Oxford staff” conspired to murder him by poisoning his

coffee. On February 6, 1996, plaintiff applied for a disability retirement because his sick leave and annual leave had run out.

From this point on, the “conspiracy” has grown to include 1) the Adams County Sheriff’s Department, which in May 1996, “falsely accused plaintiff of wire tapping people’s homes”; 2) employees of the office of Federal Workers Compensation, who in October 1996, “forced [plaintiff] to move to Madison to get [him] out of the city of Adams so [plaintiff] wouldn’t have contact with any coworkers who might know something about the coffee incident or might ask [plaintiff] about what had happened to [him]”; 3) doctors from Madison and the University of Wisconsin, who “prescribed” in January 1997, that plaintiff move to an area with more people to help plaintiff with “W/C disorder”; 4) plaintiff’s private attorney, who held plaintiff’s evidence for three years to “stop [plaintiff] from getting proper legal representation”; 5) Workers Compensation employees, who terminated plaintiff’s worker’s compensation benefits in August 1997; 6) FBI agents who investigated plaintiff in November 1997, for allegedly impersonating a United States Marshal; 7) Federal Worker’s Compensation personnel and a medical provider, who tampered with plaintiff’s medication in August 1998, to give him Grand Mal seizures; 8) a doctor who told plaintiff’s advocate and friend, Crystal Gallego, in November 1999, that plaintiff could “detox” at home when in fact that was dangerous and who conspired with “OWCP” to over medicate plaintiff with the “intent to kill . . .to conceal the evidence about [his] poisoning”; 9) a second private

attorney who conspired with doctors and staff from FCI Oxford in April 2000, to “deliberately come to [plaintiff’s] home from the state of Ohio to gather information and evidence pertaining to the poisoning of 10/11/95 and other events of harassment,” and who refused to sue plaintiff’s first private attorney for damaging plaintiff’s credit; 10) a woman not named as a defendant who conspired with John and Jane Does at FCI Oxford in May 2000, to get someone to stomp on the roof of plaintiff’s mobile home in Wood County to frighten Crystal Gallego into leaving plaintiff and not helping him with his case; 11) unknown individuals who cut gas lines on plaintiff’s vehicles on two consecutive days in July 2000; 12) various doctors, who from August to November 2000, failed to document that plaintiff had been poisoned and diagnosed plaintiff with panic disorder in an effort to cover up the poisoning; 13) doctors who lied in medical records in January 2001, to say that plaintiff was brought to the hospital on the day of his poisoning in an ambulance rather than a government sedan; 14) a doctor, a Jane Doe dispatcher and other members of the Adams County Sheriff’s Department, who conspired in January 2001, to give plaintiff a traffic ticket when he was leaving the Mile Bluff Clinic in Mauston, Wisconsin, in an effort to make him lose his driver’s license, which would then stop him from seeking legal counsel and getting proper medical treatment; 15) an officer of the Wisconsin Rapids Police Department, who conspired with John and Jane Does at FCI Oxford in February 2001, to give plaintiff a second traffic ticket in Wisconsin Rapids, again with the hope that he would lose his driver’s

license; 16) an employee of the Ferrell Gas company, who tampered with plaintiff's gas furnace in February 2001, with the intent to murder him and Crystal Gallego; 17) the Wood County Sheriff's Department, which refused in February 2001, to conduct an investigation of the attempted murder by the furnace technician; 18) the current warden at FCI Oxford, who in May, June and August 2001, respectively, refused to allow plaintiff to have contact with inmate families, meet with him in his office and bring Ms. Gallego with him, or review plaintiff's evidence of his own poisoning or evidence showing that black inmates have been poisoned at the prison; and 19) unknown individuals, who put something in the gas tank of plaintiff's car in September 2001, to prevent plaintiff from getting to the post office to mail an EEO complaint form.

In the attachments to plaintiff's complaint is a copy of an "emergency room note" written by Dr. Radant, whom plaintiff has sued as a conspirator in the plot to cover plaintiff's attempted murder. In the note, Dr. Radant notes that plaintiff's primary physician, also a defendant, has diagnosed plaintiff with panic disorder. Among other things, Dr. Radant states,

[Plaintiff] . . . presents to the ER for evaluation of multiple symptoms. He has been admitted to this institution times two, the first time in October, 1995 with hyperventilation and anxiety symptoms. Again, in November, 1995, he as [sic] admitted with a diagnosis of chest pain, rule out MI. His usual physician is Dr. Hoffmann who has assigned a diagnosis of panic disorder. . . [Plaintiff] is currently on Xanax which he finds to, perhaps aggravate his symptoms and he is suspicious of his medicines as causing his difficulty. He

relates himself as being healthy up until October of this year when he drank some cold coffee at his work place, the Oxford Prison. He suspects he was poisoned on that occasion and is frustrated that this coffee was never checked out. Reviewing his record would suggest that his symptoms of diffuse complaints begin long before this, even into 1992.

* * *

Obviously, [plaintiff] has difficulty accepting a diagnosis of panic attack. He has multiple conversion symptoms. He has difficulty accepting use of medication to help him with this, being suspicious of his medication as being responsible for his many symptoms and, yet, his symptoms are ongoing, troublesome and migratory when he is off medication. Obviously, his investigations are now becoming multiple and replete. I encourage him that he maintain his counsel with a single primary care physician, in Dr. David Hoffmann, who seems to have established a good relationship and, I believe, has clearly established a diagnosis. He is now, I think, in a process of shopping for still further opinions which I believe to be both inappropriate and expensive. His trip to the ER clearly unauthorized and inappropriate. I made no change in his medication. He has an appointment this coming Wednesday with Dr. Hoffmann at the clinic.

Plaintiff admits in his complaint that he has been seen by psychologists and that he spent “a week or two at a psych ward in La Crosse, Wisconsin” (Complaint ¶54). He has a diagnosis of panic disorder. Whether his disorder is real or fabricated by others as part of a conspiracy, as plaintiff alleges, I conclude that it is wholly incredible, fanciful and delusional to believe that the seventy-seven individuals, government entities and business entities plaintiff names as defendants, including thirty-seven individuals at the Oxford Correctional Institution, three lawyers from three different cities and two different states, a furnace technician and his business employer, doctors, psychiatrists and medical staff at

four hospitals and two clinics, a state vocational counselor, an insurance company (named as a defendant but not mentioned in the complaint), the office of Workers Compensation programs in Chicago and Washington, D.C., the Adams County and Wood County Sheriff's Departments, two agents of the FBI, a prosecuting attorney in Cuyahoga County, Ohio, and the Wood County Telephone Company, have conspired over a 10-year period to discriminate against plaintiff because of his race and murder, harass or harm him for his knowledge that Oxford prison officials allowed two inmates known to be dangerous to each other to be celled together in 1993. Therefore, pursuant to 28 U.S.C. § 1915(e)(2), I will dismiss plaintiff's conspiracy claim as legally frivolous.

Plaintiff's complaint also alleges several incidents of race discrimination taking place between 1991 and 1993 that appear to be unrelated to his conspiracy claim. These incidents of race discrimination are set forth in paragraphs 1, 2, 4, 8, and 19 of plaintiff's complaint.

In paragraph 1, plaintiff alleges that he began work as a correctional officer trainee at the Federal Correctional Institution in Oxford on December 30, 1991 and was promoted to a GS-7 level on June 28, 1992. He states that when he asked for a lateral "promotion" to another GS-7 position, defendants Steve Lentz, Judy (Langhurst) Dewar and Keith O'Neal told him that he needed one year's experience before he could apply for the move, when white employees moved to other positions within 6-8 months after a promotion.

In paragraph 2, plaintiff alleges that white staff at the institution were allowed to take

training programs without prepaying programming costs, and that plaintiff was required to prepay his training costs in March 1992, that Mr. Pickens and Mike Ingram denied him full reimbursement of those costs.

In paragraph 4, plaintiff alleges that in October 1992, he asked to join the Special Operations Response Team at the institution, but his request was denied by defendant Shy and a prison official named Swanson for the reason that plaintiff did not have at least two years' employment with the Bureau of Prisons. Plaintiff alleges that white staff that began work with the bureau at the same time plaintiff did were accepted on the team.

In paragraph 8, plaintiff alleges that defendant Wayman arranged to have plaintiff assigned to a job inside the institution after his 1-year probationary period in December 1992, while the four white correctional officers that started with plaintiff were assigned to less dangerous positions outside the institution.

In paragraph 19, plaintiff alleges that in March 1993, he requested promotion to GS-8 and was told he would not qualify for that level until he had been at the GS-7 level for one year. He alleges that white staff members got promoted within 6-8 months.

These allegations of race discrimination are not incredible on their face and I will not dismiss them out of hand. However, there are a number of hurdles plaintiff will have to cross in order to continue to prosecute them.

First, as noted above, the following persons are alleged to have committed the

discriminatory acts described in paragraphs 1, 2, 4 and 8: Steve Lentz, Judy (Langhurst) Dewar, Keith O'Neal, D. Pickens, Mike Ingram, Lt. Shy, Swanson and J. Wayman. Plaintiff has not named D. Pickens, Mike Ingram or Swanson as defendants and he does not allege who discriminated against him with respect to the claim made in paragraph 19. Plaintiff will have to identify the responsible party or parties with respect to the claim made in paragraph 19 and he will have to amend the caption of his complaint to identify them as well as the other defendants named in paragraphs 1,2, 4 and 8 of his complaint.

Second, plaintiff appears to be aware that pursuant to Fed. R. Civ. P. 4, he has 120 days from the date he filed his complaint on October 26, 2001, in which to serve the defendants and that 120 days expires on February 25, 2002. He has requested an enlargement of time in which to serve his complaint and that I sign subpoenas requiring the Bureau of Prisons and other agencies to reveal the current whereabouts of its former employees. It is not clear whether the few defendants that will remain in this lawsuit following this order have been served with a summons and a copy of plaintiff's complaint or whether they are among those plaintiff cannot locate. In any event, I will deny plaintiff's request for subpoenas signed by a judge that would require the Bureau of Prisons to divulge the whereabouts of these individuals if they are no longer Bureau of Prisons employees. I am unaware of any authority for issuing such subpoenas in the context of a civil lawsuit and plaintiff has provided none. If plaintiff is unable to locate and serve these defendants on or

before February 25, 2002, the lawsuit will be dismissed as to them.

Third, plaintiff does not allege that he is bringing his race discrimination claims under Title VII and he has not submitted a right to sue letter showing that any claim he might have under Title VII has been timely filed in this court. Therefore, I assume plaintiff is making his race discrimination claims under 42 U.S.C. § 1983. The statute of limitations on claims brought under § 1983 is six years. That limitations period may be waived if the defendants do not move promptly to dismiss on that ground. Therefore, it is improper for a court to dismiss a plaintiff's claims on its own motion simply because the claims fall outside the statute of limitations. Nevertheless, plaintiff should be aware that even though I am allowing the claims set out in paragraphs 1, 2, 4, 8 and 19 to go forward initially, there is a high probability that the defendants will move to dismiss them immediately on the ground that they fall outside the statute of limitations.

Plaintiff's request that this court put under seal a cassette tape recording relating to his conspiracy claim will be denied as unnecessary. Because I am dismissing plaintiff's conspiracy claim, there is no need to retain evidence of the alleged conspiracy in the court's record. The tape is being returned to plaintiff with a copy of this order.

Also, because I am dismissing plaintiff's conspiracy claim, plaintiff's motion to amend his complaint to add more alleged conspirators as defendants will be denied.

Finally, I will deny plaintiff's requests for appointment of counsel and a court order

directing that his “advocate,” Ms. Crystal Gallego, be placed in the United States Witness Protection Program on the ground that she “has had several attempts on her life because she assisted [plaintiff] in filing this [case].” I have no authority to place an individual in the Federal Witness Protection Program. The discretion to place individuals in the program is confined to the United States Department of Justice.

Appointment of counsel in civil cases is appropriate where the issues are complex in relation to the plaintiff’s ability and where counsel is likely to make a difference in the outcome of plaintiff’s lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). Plaintiff’s delusional thinking is a clear impediment to his prosecuting his claims on his own. However, given the likelihood that plaintiff’s remaining claims will be dismissed promptly on the ground that they are barred by the statute of limitations, appointment of counsel will not make a difference in the lawsuit’s outcome.

ORDER

IT IS ORDERED that

1. Plaintiff’s request for “subpoenas signed by a judge” is DENIED;
2. Plaintiff’s request for an enlargement of time in which to serve the defendants with his complaint is DENIED. Plaintiff has until February 25, 2002, in which to amend his

complaint to include in the caption of his complaint as defendants, D. Pickens, Mike Ingrim, and Swanson and the individual or individuals responsible for the alleged race discriminatory act described in paragraph 19 of his complaint and to submit proof of service of his complaint upon these defendants and defendants Steve Lentz, Judy (Langhurst) Dewar, Keith O'Neal, Lt. Shy and J. Wayman. If, by February 25, 2002, plaintiff fails to amend the caption of his complaint and submit proof of service of his complaint on these defendants, I will dismiss the case.

3. Plaintiff's request that this court put under seal a cassette tape recording he submitted with his complaint allegedly containing evidence of a conspiracy is DENIED. The tape is enclosed to plaintiff with a copy of this order.

4. Plaintiff's motion to amend his complaint to add as defendants to his conspiracy claim, Jim Drinkwater, a UNICOR foreman at the Federal Correctional Institution in Oxford, Wisconsin; the Wood County Sheriff's Department; R.M. Starks, a deputy sheriff of the K-9 unit at the Wood County Sheriff's Department, Ferrell Gas, a petroleum company in Wisconsin Rapids, Wisconsin; "Henry," a furnace technician of Ferrell Gas;

William D. Mason, a prosecuting attorney in Cuyahoga County, Ohio; and the Wood County Telephone Company is DENIED.

5. Plaintiff's requests for appointment of counsel and a court order directing that his "advocate," Ms. Crystal Gallego, be placed in the United States Witness Protection Program are DENIED;

6. Pursuant to 28 U.S.C. § 1915(e)(2), plaintiff's conspiracy claim is DISMISSED from this lawsuit as legally frivolous. This means that plaintiff's complaint is dismissed with respect to all portions except paragraphs 1, 2, 4, 8 and 19.

7. Finally, all defendants are DISMISSED from this case except defendants Steve Lentz, Judy (Langhurst) Dewar, Keith O'Neal, Lt. Shy and J. Wayman.

Entered this 8th day of February, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge