

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

WILLIAM FREDERICK WILLIAMS,

Plaintiff,

v.

ORDER

02-C-0472-C

CAPTAIN DAVID LISTUG; DEPUTY
WILLIAM A. HENDRICKSON; DEPUTY LINGUARD;
and KARIANNE KUNDERT,

Defendants.

In an order dated September 27, 2002, I reserved a ruling until October 11, 2002, on plaintiff's request for leave to proceed in forma pauperis against defendants William A. Hendrickson and David Listug on a claim that these defendants denied him access to the courts by withholding his legal materials. This court asked plaintiff to submit a copy of his direct appeal in state court (case 95-CF-2235) and the state court's response in which it concluded that his appeal was untimely. Subsequently, plaintiff requested and was granted an extension of time to November 11, 2002 to secure a copy of the required documents from the Wisconsin Court of Appeals.

Now plaintiff has filed a motion to stay a decision whether to grant him leave to proceed in forma pauperis on his claim that he was denied access to the courts or, alternatively, to dismiss the claim without prejudice. In addition, plaintiff has filed a “Motion to Amend the Complaint to Add a Party Defendant,” in which it appears he is asking to add a Deputy Wagner on his claim that he was denied access to the courts.

In support of his motion to stay or dismiss, plaintiff explains that despite his efforts, he has not yet been able to obtain the documentation the court requested. His motion is accompanied by a few documents that plaintiff has been able to gather and none supports a claim that he has been denied access to the courts. Instead, plaintiff states that he is attempting to obtain additional relevant documents by filing an open record request with the clerk of the Dane County Circuit Court. Because it does not appear that plaintiff can predict with any accuracy how soon, if ever, he will be able to obtain documentation supporting his claim that he was denied access to the courts, I will grant his alternative motion to dismiss the claim without prejudice to his filing a new lawsuit at a later date. Because I am dismissing his access to the courts claim, plaintiff’s motion to amend his complaint to add Deputy Wagner as a defendant will be denied as moot.

One final matter needs to be addressed. The clerk of court sent plaintiff a letter informing him that his complaint had been forwarded to the Wisconsin Department of Justice for acceptance of service of process. However, the clerk of court sent this letter in

error. Because defendants are Dane County employees, not State of Wisconsin employees, they are not covered by the informal service agreement this court has with the state. Therefore, plaintiff is required to submit completed Marshal Service and summons forms to the court in order to serve process on defendants Deputy Linguard and Karianne Kundert.

ORDER

IT IS ORDERED that

1. Plaintiff William Frederick Williams's motion to stay his access to the courts claim is DENIED and his motion that to dismiss that claim without prejudice is GRANTED; Plaintiff's access to the courts claim against defendants William A. Hendrickson and David Listug is DISMISSED without prejudice;

2. Defendants William A. Hendrickson and David Listug shall be removed from the caption of this case;

3. Plaintiff's motion to amend the complaint to add Deputy Wagner as a defendant is DENIED as moot; and

4. Plaintiff may have until December 6, 2002, in which to complete the enclosed Marshals Service and summons forms and return them to the court so that his complaint may be served on defendants Deputy Linguard and Karianne Kundert. If, by December 6, 2002, plaintiff fails to complete the forms and return them to the court or explain his failure

to do so, this case will be dismissed for plaintiff's failure to prosecute it.

Entered this 21st day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge