

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

EDWARD J. PISCITELLO,

Plaintiff,

v.

GERALD BERGE,

Defendant.

ORDER

02-C-0252-C

For the fifth time since May 2002, when he filed the complaint in this case, plaintiff is requesting permission to proceed in forma pauperis on a claim that his transfer to the Wisconsin Secure Program Facility was in violation of his constitutional rights.

Plaintiff first raised the claim in his complaint, alleging nothing more than that his transfer was accomplished with “no procedure due process, just up and transferred.” In an order dated June 13, 2002, I granted plaintiff leave to proceed in forma pauperis on claims that he was denied biblical counseling courses in violation of the First Amendment and that the totality of the conditions of confinement at the Wisconsin Secure Program Facility violated his Eighth Amendment rights. I denied him leave to proceed on his illegal transfer claim on the ground that it was legally frivolous.

Four months later, on October 15, 2002, plaintiff filed a motion for leave to file a supplement to his original complaint. In the proposed supplemental complaint accompanying the motion, plaintiff laid out a 39-page tale of an alleged conspiracy by dozens of mostly unnamed persons beginning in 1989 to convict him of a murder that he did not commit and that would not even have occurred but for the ineptness of the Milwaukee Police Department and other law enforcement officials, to hold him in prison illegally for years, and to transfer him to the Wisconsin Secure Prison Facility with the knowledge that he is not under a valid judgment of commitment. Plaintiff alleges that the motive behind the conspiracy was to “impede and prevent [him] from blowing the whistle on the true occurrences surrounding the said August 19, 1989 murders and the underlying organized crime investigations leading up to those murders.” In an order dated October 31, 2002, I denied plaintiff’s motion to supplement his complaint because his allegations of conspiracy bore no relationship to the two claims on which I had granted him leave to proceed.

On November 15, 2002, plaintiff filed a motion for reconsideration of the October 31 order. In this motion, plaintiff made legally frivolous arguments that “well settled precedent requires notice and an opportunity to be heard before depriving a litigant of his property interest in a lawsuit,” and that “Congress did not intend that prisoner lawsuits would be dismissed for failure to state a claim without first giving the prisoner notice and

an opportunity to be heard.” I denied the motion for reconsideration in an order dated November 21, 2002.

Meanwhile, on November 4, 2002, I granted defendant Berge’s motion to dismiss plaintiff’s Eighth Amendment totality of conditions of confinement claim for plaintiff’s failure to exhaust his administrative remedies.

On December 10, 2002, plaintiff filed a “motion and memorandum for temporary restraining order and preliminary injunction” in which he sought to enjoin alleged retaliatory conduct which included his transfer to the Wisconsin Secure Program Facility. I denied this motion on December 17, 2002, because plaintiff had not served a copy of the motion on opposing counsel and the immediate injunctive relief plaintiff sought concerned matters not a part of this lawsuit.

Not discouraged, plaintiff moved on January 15, 2003, to “vacate” and “void” the judgment. I construed his motion as a motion for reconsideration of that portion of the June 13, 2002 order denying him leave to proceed in forma pauperis on his transfer claim or, alternatively, to modify the June 13, 2002 order to include a finding that the order is appealable under 28 U.S.C. § 1292. Those motions were denied on January 24, 2003.

Now before the court is plaintiff’s January 27, 2003 “motion for leave to file amended complaint.” In his proposed amended complaint, plaintiff asks to add defendants to the case and to be allowed to proceed on his claim that his transfer to the Wisconsin Secure Program

Facility was “actuated by retaliatory and political motives relating to plaintiff’s participation in the misconduct investigations against . . . very high-level federal and state law enforcement officers involved in the intelligence failures that had directly caused the said August 19, 1989 murders of [Brothers of Struggle street gang’s] top operatives Mohammad Binwalee and Dion Russell and the wrongful imprisonment of plaintiff.” There is no mention in the proposed amended complaint of the only claim remaining in this case, plaintiff’s First Amendment religious counseling claim, which is the subject of a motion for summary judgment filed by defendant Berge on December 19, 2002.

I am covering this territory for the last time. Plaintiff may not amend his complaint at this late date to eliminate the one remaining claim in his original complaint that has potential legal merit in favor of a claim that does not belong in this lawsuit, as I have held on four different occasions. I will place in the file without comment any further motions plaintiff files that seek relief for an alleged illegal transfer. Moreover, I point out for defendant’s sake that when he responds to the proposed findings of fact that plaintiff filed in opposition to defendant’s motion for summary judgment, defendant need not respond to any facts proposed by the plaintiff that relate to contentions that he has been subjected to a conspiratorial or retaliatory transfer, as these proposed facts are immaterial to this case.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED.

Entered this 6th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge