

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

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WILLIAM CLIFTON LEWIS,

Petitioner,

v.

MICHAEL J. SULLIVAN, Secretary,  
Wisconsin Department of Corrections,

Respondent.

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ORDER

00-C-705-C

Petitioner William Clifton Lewis is a prisoner at Waupun Correctional Institution in Waupun, Wisconsin. He has submitted a proposed complaint requesting leave to proceed in forma pauperis. In his proposed complaint, petitioner contends that he has been diagnosed with chronic post traumatic stress disorder related to his combat experience as a member of the United States Armed Forces and that his condition is aggravated by stressors. He further contends that the Wisconsin Department of Corrections has no program to treat incarcerated prisoners suffering from post traumatic stress disorder and that the department plans to transfer him to an out-of-state facility with even less capacity to treat his disorder. Petitioner seeks an injunction preventing his transfer and other declaratory and injunctive relief.

Petitioner has not paid the \$150 filing fee in this case, but has instead submitted an “Affidavit for Leave to Proceed In Forma Pauperis.”

Petitioner filed a virtually identical complaint in another case, Lewis v. Sullivan, 98-C-789-C. Petitioner was denied leave to proceed in forma pauperis in that case because he was barred by 28 U.S.C. § 1915(g), colloquially known as the “three strikes” provision of the Prison Litigation Reform Act. Subsequently, petitioner objected to the denial, contending that 28 U.S.C. § 1915(g) is unconstitutional and violates his right to equal protection of the laws of the United States. Because that issue is an open one in the Seventh Circuit, I decided that it was appropriate to take up the question and appoint counsel for petitioner. After briefing had been completed, I concluded that it was premature to determine the constitutionality § 1915(g) because there was no evidence that petitioner had exhausted his available administrative remedies as required under 42 U.S.C. § 1997e(a). Petitioner asked to re-open his lawsuit and submitted proof that he had exhausted his administrative remedies in August 2000. Because the proposed complaint in case number 98-C-789-C was filed in November 1998, petitioner had not exhausted his administrative remedies before he filed that case. See Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7<sup>th</sup> Cir. 1999) (“a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intraprison remedies

before judgment”). Therefore, in an order entered October 26, 2000, I suggested that petitioner re-file his complaint in a new case.

In accordance with the October 26, 2000 order entered in case number 98-C-789-C and petitioner’s letter received on November 17, 2000, I understand petitioner to challenge the constitutionality of 28 U.S.C. § 1915(g) in the present case. As discussed in the October 26 order, I will consider the briefs that were submitted in case number 98-C-789-C as if they had been submitted in this case. However, because over a year has passed since those briefs were submitted, it is appropriate to allow defendant Sullivan (and the United States, assuming it wants to intervene in this case as it did in the previous one) an opportunity to supplement those briefs with arguments based on any additional case law that has been decided since they were filed. In the October 26 order, petitioner was advised to submit any supplemental briefs with his complaint so I assume from his failure to do so that he wishes to rely solely on the brief submitted by his lawyer in the earlier case.

#### ORDER

IT IS ORDERED that defendant Michael Sullivan may have until December 11, 2000, to submit a supplemental brief, if desired, updating his arguments as to the constitutionality of 28 U.S.C. § 1915(g) that were filed in Lewis v. Sullivan, 98-C--789-C. The United States

of America may have until December 11, 2000 in which to advise the

court whether it wishes to intervene in this case and to file any supplemental brief.

Entered this 27th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge