IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER J. SCARVER,

ORDER

Petitioner,

00-C-711-C

v.

JON E. LITSCHER, GERALD BERGE,
S.M. PUCKETT, PAM BARTELS,
D. POLIAK and SHARON ZUNKER,

Respondents.

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This is a proposed civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Christopher J. Scarver, who is presently confined at Supermax Correctional Institution in Boscobel, Wisconsin, seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has on three or more previous occasions had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. Although this court will not dismiss petitioner's case sua sponte for lack of administrative exhaustion, if respondents can prove that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

Petitioner contends that he received inadequate medical care in violation of the Eighth Amendment, he was placed at Supermax and on administrative confinement without due process in violation of the Fourteenth Amendment, respondents conspired to deny him his rights to adequate psychiatric care and these violations of his rights were retaliatory. Petitioner will be denied leave to proceed in forma pauperis on all of his claims because none state a claim upon which relief may be granted.

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

I. PARTIES

Respondent Jon E. Litscher is Secretary of the Wisconsin Department of Corrections and respondent Sharon Zunker is Director of the Bureau of Health Services. Respondent Gerald Berge is Warden, respondent S.M. Puckett is Security Director, respondent Pam Bartels works in health services and respondent D. Poliak is a health care supervisor. (Petitioner does not specify the prison at which these respondents work, but I infer from his complaint that they all work at Supermax Correctional Institution.)

II. MENTAL HEALTH

Petitioner arrived at Dodge Correctional Institution in April 1992. Petitioner sent many requests to psychiatrists at the prison after a sergeant threatened petitioner saying he would "do petitioner like the cops in Los Angeles did Rodney King." Several other prisoners witnessed the incident and filed complaints about it, as did petitioner. Petitioner wrote to the psychiatrists to try to get help to relax, sleep and stop the voices in his head that kept him in a state of anxiety. Petitioner began to hear the sergeant and other staff outside his cell at night,

whispering about what they planned to do to him. After petitioner was moved to another unit, certain staff would whisper and make jokes about the incident.

One day, an officer told petitioner that he could not go to the cafeteria to eat with the other prisoners and that petitioner should stay in his cell when the cell doors opened to allow the prisoners to go to the cafeteria. Petitioner believed that this was the time and perfect opportunity that staff members had been waiting for to kill him or "do him like Rodney King" because there would be no witnesses left on the unit. Petitioner prepared himself to die in battle by breaking up his footlocker and using a piece of it as a potential weapon. He then put war-stripes on his face using Noxema. When the cell doors opened, petitioner came out with everyone else as usual. When the officers tried to stop him, petitioner thought that they were trying to kill him. Therefore, petitioner used his fists and his weapon to defend himself, telling the officers at the same time, "I am not Rodney King!" Petitioner was strapped down and injected with a sedative. Finally, the psychiatrist came to see petitioner, but he was too tired to speak to her because he had been sedated and strapped down.

Instead of receiving the help he wanted, petitioner was sent to Columbia Correctional Institution. There, he was punished for his illness even though he had sought psychiatric help before the incident at Dodge. The psychiatrist has the responsibility to interview all prisoners upon entry into the prison system to assess and evaluate their psychological state to determine

their treatment needs, if any, and their placement in the system. After an interview with petitioner, the psychiatrist wrote, "There is something definitely wrong with this man." The Department of Corrections ignored this and other documented statements about petitioner's mental state, past diagnosis and appropriate treatment.

In September and October 1992, petitioner was in segregation at Waupun Correctional Institution for the incident at Dodge. After he wrote several requests to the psychiatrist, he was compelled to cut his wrists. A few days later, the psychiatrist came, saw petitioner's wrists and the dried blood on petitioner's property bags and on the walls. The psychiatrist prescribed Benadryl.

In December 1992, petitioner was at Columbia Correctional Institution. Petitioner made several requests to see the psychiatrists for the voices inside his head that he was hearing more frequently; petitioner was told repeatedly that he had to wait because the doctors would not be back until after the holidays and that no one else could prescribe the medication that petitioner needed. Petitioner felt that he had no other choice but to tie his ankles and one arm to the bed frame after covering himself with a sheet, newspaper and open matchbooks. Petitioner then set the matchbooks on fire. He was taken to two hospitals and treated for burns and smoke inhalation. Throughout, petitioner continued to hear voices and see things. In a hospital in Madison, he was allowed finally to speak to a psychiatrist who gave him a

psychotropic medicine that helped a little. Petitioner remained at the hospital for several days. When he was taken back to Columbia Correctional Institution, he was put in an observation cell with no mattress and no clothes. Petitioner experienced several blackouts there. He was written a ticket about the incident and punished again for his illness by being made to pay restitution for the mattress.

In spring 1993, petitioner was sent to the Wisconsin Resource Center where he was to be treated for his illness in a semi-therapeutic environment. Staff there denied petitioner this treatment after they allegedly heard a rumor that he was plotting to take hostages, escape and rape a staff member. The staff never wrote petitioner a ticket for this but the allegation was treated as fact and has been used ever since to deny him proper treatment at the Wisconsin Resource Center. After approximately one month, petitioner was sent back to Columbia Correctional Institution.

In April or May 1993, while petitioner was in the hole, the voices in his head began again, along with other symptoms and with greater fury than before. Petitioner made several requests to speak to the psychiatrists but was told that they were gone for the week. Petitioner tried to wait, but an hour in the hole while experiencing mental problems felt like a month would to a normal mind. For days, the voices gave petitioner orders and explanations, especially while he slept. Petitioner slept infrequently because he had to stand guard against what the

voices might talk his mind into believing or doing. Petitioner thought that the voices were trying to take over control of his body. The voices told petitioner that the only way he could be free of them and their pain was to cut his wrists. When the guards brought razors, petitioner did just that, cutting as deeply as he could. In a ticket after petitioner cut his wrists, the guard said that he gave petitioner a direct order to come to the door to be handcuffed but petitioner does not recall that. Petitioner was falling in and out of consciousness and did not know that the guards were at his cell until pepper spray or mace was sprayed into his face and the cuts. Petitioner was taken to the prison clinic where he asked repeatedly for Haldol, a psychotropic medicine that he had taken before, or for anything that would stop the voices. The hospital staff stitched up the cuts, even though all that mattered to petitioner was stopping the voices and visions and other psychological torture that was happening in his head. Petitioner told the physician that he needed the medicine before the stitches. Finally, petitioner was given the medicine but the voices directed him to refuse the stitches and bleed to death. Petitioner told the physician that he did not want the stitches.

In July 1993, petitioner was placed on the special management unit after he got out of the segregation unit at Columbia Correctional Institution. There, he received some of the help that he needed in a semi-therapeutic setting. Later, he got a job as a tutor and was doing fairly well until forced to work with a serial killer, Jeffrey Dahmer, in the gym in 1994. The serial

killer was known for playing morbid pranks on prisoners, guards and staff, involving fake blood and body parts, among other things; petitioner had two choices: work with the serial killer or go to the hole. Really, petitioner had no choice because it was the hole that seemed to bring out and escalate the intensity of his psychological problems. Petitioner did not know that working with Dahmer would be even worse. Petitioner began to get strong vibes and the voices grew louder and had a new theme. Petitioner's doctor put him on a new medicine to help drown out the voices and to help stop the visions of dead people asking for his help. But it made petitioner feel as if he was walking in his sleep. Petitioner and others began to speak out about working with Dahmer, and some were sent to the hole in response. A few days or weeks later, petitioner's psychological situation grew worse and two prisoners lost their lives. Petitioner was put in the hole in seclusion to await trial.

In May 1995, petitioner arrived at Springfield Federal Hospital and was evaluated psychologically. A few months later, petitioner was sent to ADX Florence federal prison. Petitioner did not cooperate with the doctors because he did not trust them and because they told him that if he needed treatment, they would have to keep him locked up twenty-four hours a day and would give him pills through the slot in his cell door.

In October or November 1995, petitioner was sent to segregation at ADX Florence. The voices grew louder until petitioner was forced to get medication. Because no therapy was given,

nothing changed. Petitioner had to get off the medicine after he was released from segregation because in population the other prisoners would taunt, criticize, ridicule and provoke prisoners with mental illnesses.

Petitioner has to keep his ears plugged to be able to distinguish between internal and external voices. In the federal system, petitioner used actual ear plugs that were sold at the prison. At Supermax there are no ear plugs so petitioner has to use rolled up toilet paper. The toilet paper comes apart in his ear leaving parts that are too small to remove and therefore causing more problems because the health staff will not provide cotton swabs. Without ear plugs, the voices in petitioner's head mingle with external sounds, multiply and are magnified. A toilet flushing becomes a chorus of a thousand people. A slammed door sounds like a command or a shout. A running shower sounds like a thousand people whispering and gossiping. But silence is the worst. Petitioner's mind seems to be straining for the next external sound to come and he begins to hear high pitched sounds that last for hours, days and even weeks. The strained tension leads to headaches. Regardless of how he handles things outside the hole, every time petitioner was put in the hole he would need some medicine that did not work for long or consistently. Petitioner has tried many different strong medicines and none work consistently without therapy.

While petitioner was at ADX Florence, he made many requests that neurological and

diagnostic tests such as a MRI, EKG or CAT scan be performed on him to find out what was wrong in his head and how he could stop or control it. Federal prison officials denied petitioner these tests.

In December 1999, petitioner was given a job after having been unemployed for five years. This was of great therapeutic value. Petitioner was also allowed to have another form of psychiatric therapy, the use of self-help psychological cassettes to reprogram his mind and rid him of negative thinking and anxiety and help him to relax. Petitioner believes that he was on his way to recovery, but in April 2000, the Wisconsin Department of Corrections took him out of the federal prison in Colorado and denied him the psychological tools that he needs. Before being placed at Supermax Correctional Institution, petitioner was told that prisoners with a history of mental illness could not be placed legally in supermax prisons such as the one in Boscobel, Wisconsin. Upon entry into the prison, petitioner asked Lieutenant Biggers if the prison had a unit for prisoners with psychiatric problems. He said, "There are no prisoners here with those kinds of problems." When petitioner told him that petitioner had those problems, Biggers shrugged and said, "That's not my concern." Petitioner's letter to respondent Litscher was responded to with an assertion that Wisconsin officials could keep petitioner at Supermax regardless of his condition. Since petitioner has been at Supermax, his mental condition has worsened and the only help he has received has been pills passed through the cell door. This

has done little good.

Wisconsin prison officials are aware that most of the past psychotic episodes petitioner has experienced occurred while petitioner was confined in segregation.

Before petitioner was sent back to Wisconsin, he had not had a minor conduct report in three years and had not had a major conduct report in six years. But only a month after being at Supermax, the voices began to grow unbearable as well as the motion in petitioner's brain. The voices grew so unbearable that petitioner became suicidal. The Thorazine pills that petitioner was prescribed did not work so petitioner tried to find permanent relief by taking an overdose of 32 pills. Petitioner was put in isolation and again punished for his illness with 8 days' adjustment and 180 days' program segregation. Petitioner finds it increasingly difficult to get through the day without having suicidal thoughts. Petitioner has attempted suicide several times while at Supermax in an attempt to alleviate the pain and confusion of his illness. Petitioner was punished again when a torn sheet made into handcuffs, ankle shackles and a noose was found on a surprise inspection of his cell. The worst thing about Supermax is not the sensory deprivation but the lack of opportunity for a person to alleviate his pain by suicide.

Petitioner has been told that the reason he has been denied proper treatment is because his security classification is too high. Petitioner's mental illness was used to place him at Supermax on administrative confinement. The Wisconsin Department of Corrections is using

prison rule infractions that occurred over six years ago to keep petitioner at Supermax. Officials said that if petitioner was allowed in a population where he could receive proper treatment, he would hurt staff and prisoners. But the officials omitted the relevant evidence about his mental illness and the fact that petitioner lived in population in the federal system for five years without a physical or verbal incident of any kind.

Respondent Warden Berge was made aware of petitioner's concerns but never responded appropriately. Each of the respondents has kept petitioner at Supermax while ignoring and covering up his psychological treatment needs. They even dropped his clinical needs from high to moderate without a psychological examination. Respondents ignore the clinical records on file, including the last records by doctors in the federal system who listed petitioner as mentally ill. Respondent Puckett affirmed the decision of the review board to keep petitioner at Supermax in spite of the clinical files. Respondent Zunker did nothing but reroute petitioner's letters in a circle by giving copies of them to the warden and doctors without making any recommendation even after petitioner told her that he had already written to those people and been denied. Petitioner contacted respondent Litscher several times but received no response. Starting about a month after petitioner was returned to Wisconsin in May 2000, he has filed complaints with the warden, the unit manager and the complaint examiner about harassment by guards who seem to be trying to worsen petitioner's condition by provoking him

to hysteria.

Prison officials have downgraded petitioner's psychological needs as if his condition has improved even though he told them many times that it is deteriorating. Officials at Supermax denied petitioner the therapeutic cassettes that had helped him in the federal system, even after petitioner explained that they were not for entertainment but for therapeutically changing a person's negative thinking patterns into positive thought patterns and for changing anxiety and hostility into calmness, patience and understanding. Petitioner was told months ago by a Dr. Fulcon as well as a crisis intervention staff member that he should not worry about why he was at Supermax but instead should concentrate on getting out. They said that this could be done by following the rules and participating in Supermax's level system program. Petitioner did this but the prison keeps changing the rules and making it harder to succeed in the program. For example, when the prison first opened, prisoners could get a television 2-4 weeks after they arrived at the prison if they did not get a ticket. Now each prisoner must wait four months or more to get a television. The television is important because it is the only means of partially breaking the sensory deprivation at the prison. It is also the only means to see psychiatric programming on video, even thought that programming has little possibility of helping anyone.

Petitioner passed the required four months without receiving a ticket, but the rule was

changed again and the staff said he was not eligible for a television because of his bizarre behavior, the fact that he did not speak to staff members and his mental illness. Denying petitioner a television is a form of harassment because if petitioner did not speak to staff members, he would have received a ticket long ago. Another way that staff harass petitioner is through the use of the six-month review system. If staff members lie, it is too late to correct it so it stays on an inmate's record. Petitioner participated in a psychological program offered called "Turning Point Program," even though a television is needed to fully participate in the programming. Although he had been in the program for over three months, petitioner was not given credit for it and staff denied that he was enrolled in it. There have been prisoners sent out to other prisons for psychiatric care before they completed the program. Petitioner's condition is much more severe than those who have received treatment but he has been ignored. Staff told petitioner to work his way out of Supermax so that he could get the psychiatric help he needs. Staff use the fact that petitioner needs help to deny him advancement in the program.

DISCUSSION

I understand petitioner to allege that he received inadequate medical care in violation of the Eighth Amendment, he was placed at Supermax and on administrative confinement

without due process in violation of the Fourteenth Amendment, respondents conspired to deny him his rights to adequate psychiatric care and these violations of his rights were retaliatory.

I. INADEQUATE MEDICAL TREATMENT

The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, petitioner must allege facts from which it can be inferred that he had a serious medical need (objective component) and that prison officials were deliberately indifferent to this need (subjective component). See Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). Attempting to define "serious medical needs," the Court of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. See

Gutierrez, 111 F.3d at 1371. "Suicide is a 'serious harm' and prison officials must take reasonable preventative steps when they are aware that there is a substantial risk that an inmate may attempt to take his own life." Estate of Novack ex rel. Turbin v. County of Wood, 226 F.3d 525, 529 (7th Cir. 2000).

The Supreme Court has held that deliberate indifference requires that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837. Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. Deliberate indifference in the denial or delay of medical care is evidenced by a defendant's actual intent or reckless disregard. Reckless disregard is characterized by highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. See Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985).

Petitioner alleges that he has been deprived of adequate psychiatric treatment. I will assume for purposes of this opinion that petitioner's psychiatric condition is a serious medical need. Petitioner has failed to allege any facts to support an inference that any of the respondents recklessly disregarded his condition, resulting in needless pain and suffering.

Petitioner alleges that he saw many psychiatrists and received various psychotropic drugs over the course of several years, including while he was at Supermax. On at least one occasion, he alleges that he chose to stop taking his medication so that other inmates would not harass him for having a mental illness. Furthermore, petitioner does not make a single specific allegation that any respondent knew that petitioner was at risk of suffering serious harm if he did not receive psychiatric care. To the extent that petitioner is suicidal, his allegation that at Supermax he has no opportunity to commit suicide suggests that respondents or other prison officials have taken reasonable steps to prevent him from killing himself. Petitioner has failed to allege that respondents acted with reckless disregard for his health. Even though petitioner may disagree with the course of treatment he received, such a disagreement does not rise to the level of deliberate indifference. See Snipes, 95 F.3d at 590. "A prisoner's dissatisfaction with a doctor's prescribed course of treatment does not give rise to a constitutional claim unless the medical treatment is 'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition.'" Id. at 592. Petitioner was not entitled to whatever treatment he desired; he is entitled only to the level of treatment that meets the standards of the Eighth Amendment. His own allegations show that he has received such treatment. Accordingly, his request for leave to proceed in forma pauperis on his Eighth Amendment claim will be denied for his failure to state a claim upon which relief may be

granted.

II. DUE PROCESS

A. Administrative Confinement

I understand petitioner to contend that his rights under the due process clause of the Fourteenth Amendment were violated when he was forced to spend extended time in administrative segregation without reviews or hearings. Petitioner fails to state a claim upon which relief may be granted. His allegations do not establish that he was deprived of a protectible liberty interest. A procedural due process violation against government officials requires proof of inadequate procedures *and* interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, in the prison context, protectible liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not

allow suit complaining about deprivation of liberty).

Petitioner has no liberty interest in not being assigned to administrative confinement, because such confinement is "well within the terms of confinement ordinarily contemplated by a prison sentence." Hewitt v. Helms, 459 U.S. 460, 468 (1983). See also Smith v. Shettle, 946 F.2d 1250, 1252 (7th Cir.1991) ("a prisoner has no natural liberty to mingle with the general prison population"); Wis. Admin. Code DOC § 308.04 (1998) note ("by providing the review [by the administrative review committee prior to placing an inmate in administrative confinement], the Department does not intend to create any protected liberty interest by using mandatory language"). Because petitioner has no liberty interest that has been violated, he has no right to due process before being placed in administrative confinement or before his stay in administrative confinement can be continued. Petitioner's claim that his placement in administrative confinement violated the Fourteenth Amendment is legally frivolous.

B. Supermax

Petitioner contends that he was transferred to Supermax Correctional Institution without due process. "A prisoner has no due process right to be housed in any particular facility." Whitford v. Boglino, 63 F.3d 527, 532 (7th Cir. 1995); see also Pischke v. Litscher, 178 F.3d 497, 500 (7th Cir. 1999) (prisoner has no legally protected interest "in [his] keeper's

identity"). In Pischke, the court of appeals concluded that the housing of Wisconsin prisoners with private prisons in other states did not violate the Thirteenth Amendment. See Pischke, 178 F.3d at 500. In addition, the court stated that it could not "think of any other provision of the Constitution that might be violated by the decision of a state to confine a convicted prisoner in a prison owned by a private firm rather than by a government." Id. Therefore, petitioner's claim that his transfer to Supermax violated the Constitution is legally frivolous.

III. CONSPIRACY

Petitioner alleges that respondents conspired to deny him adequate psychiatric care. To establish a claim of civil conspiracy, petitioner must show "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage.'" Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979) (citing Rotermund v. United States Steel Corp., 474 F.2d 1139 (8th Cir. 1973)). Claims of conspiracies to effect deprivations of civil or constitutional rights may be brought in federal court under § 1983. A bare allegation of conspiracy is insufficient to support a conspiracy claim. See Ryan v. Mary Immaculate Queen Center, 188 F.3d 857, 860 (7th Cir. 1999). Rather, a plaintiff must allege facts to describe the

form and scope of the conspiracy and when it was formed. See id. Petitioner has provided no explanation how respondents would have conspired to deny him adequate psychiatric care or when the conspiracy was formed. Therefore, petitioner will be denied leave to proceed in forma pauperis on his conspiracy claim because the claim is legally frivolous.

IV. RETALIATION

A prison official who takes action in retaliation for a prisoner's exercise of a constitutional right may be liable to the prisoner for damages. See Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). The official's action need not independently violate the Constitution. See id. To state a claim in the absence of direct evidence of retaliation, the prisoner must allege a chronology of events that supports drawing an inference that the official acted in retaliation, see Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994); the allegations must show that absent a retaliatory motive, the prison official would have acted differently. See Babcock, 102 F.3d at 275. Petitioner's only allegations of retaliation are that "Wisconsin's actions [denying petitioner proper psychiatric treatment] and reasons are groundless and retaliatory" and "This suit is about 8th Amendment violations, denial of due process in sending him here (no meaningful hearing) and conspiracy to deny him his rights to adequate psychiatric care. Retaliation. Abuse of a resident." Petitioner has failed to suggest any reason that

respondents or the State of Wisconsin, which is not a respondent, had any reason to retaliate against him and he has failed to allege that he exercised a constitutional right. Petitioner will be denied leave to proceed on his retaliation claim because the claim is legally frivolous.

ORDER

IT IS ORDERED that

1. Petitioner Christopher J. Scarver's request for leave to proceed in forma pauperis on his claim that he received inadequate psychiatric treatment in violation of the Eighth Amendment is DENIED for his failure to state a claim upon which relief may be granted;

2. Petitioner's request for leave to proceed in forma pauperis on his Fourteenth Amendment, conspiracy and retaliation claims is DENIED because the claims are legally frivolous;

3. A strike will be recorded against petitioner pursuant to § 1915(g);

4. The unpaid balance of petitioner's filing fee is $142.43; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2); and

5. This action is DISMISSED. The clerk of court is directed to enter judgment and close the file.

Entered this 19th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge