

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

CEDRIC JOHNSON,

Plaintiff,

v.

PHIL KINGSTON,
TIM DOUMA, JACK KESTIN and
BILL PUCKETT,

Defendants.

ORDER

03-C-0143-C

Plaintiff has been granted leave to proceed in forma pauperis in this case on his claim that on January 10, 2003, he was transferred from the Columbia Correctional Institution to the Waupun Correctional Institution in retaliation for his protected legal activities. The parties are presently briefing a motion for summary judgment on the merits of the case. Now plaintiff has filed a motion for leave to amend his complaint to reinstate two proposed defendants, Warden Gary McCaughtry and Security Director Marc Clements, who were dismissed from the action on April 18, 2003. In denying plaintiff leave to proceed against proposed defendants McCaughtry and Clements, I stated,

Plaintiff alleges that *after* his transfer, he told defendants McCaughtry

and Clements that he feared for his life at Waupun. However, plaintiff does not allege that McCaughtry and Clements were personally involved in the decision to transfer him to their prison or that he suffered more retaliatory acts at the hands of McCaughtry and Clements. Therefore, plaintiff will not be allowed to proceed on his retaliatory transfer claim against defendants McCaughtry and Clements.

(Emphasis in original.) In his proposed amended complaint, plaintiff alleges that on May 7, 1997, Warden McCaughtry ordered plaintiff's immediate transfer out of the Waupun Correctional Institution in retaliation for plaintiff's having provided a television station with details of the prison's failure to approve him for placement on a liver transplant list. In addition, he alleges that as soon as he was returned to Waupun Correctional Institution in January 2003, Warden McCaughtry and Security Director Clements "informed the appropriate staff of the placement as well as probable suggestions as to the type of treatment the plaintiff was to receive." Plaintiff then goes on to describe objectionable treatment he received from a Sgt. Longseth and correctional officers Kahl and Tollefson, none of whom are defendants in this action.

Plaintiff's new allegations of retaliatory conduct against proposed defendants McCaughtry and Clements occurring in 1997 and following his January 2003 transfer are separate and distinct from the claim on which plaintiff has been granted leave to proceed, that is, that the January 2003 transfer was itself retaliatory. Because the parties are briefing a motion for summary judgment on the merits of this claim, it is too late for plaintiff to

amend his complaint to raise unrelated claims, particularly when those claims could have been raised in plaintiff's first complaint. If plaintiff wishes to pursue additional claims of retaliation against Clements and McCaughtry or other persons not parties to this action, he is free to do so in a separate lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint to reinstate Waupun Correctional Institution Warden McCaughtry and Security Director Clements as defendants is DENIED.

Entered this 15th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge