

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

JOHN GREGORY DAHLK,

Plaintiff,

v.

KATHY LEMENS and JEANANNE HERTEL,

Defendants.

ORDER

03-C-113-C

In an order entered in this case on May 12, 2003, I granted plaintiff leave to proceed in forma pauperis on his claims that defendant Lemens was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment and retaliated against him for filing an inmate complaint in violation of the First Amendment by intentionally delaying a refill of his prescription medication for gastric pain and acid reflux for nine days in June 2002. In addition, I granted plaintiff leave to proceed on claims that (1) he had to wait nine months to have a broken tooth fixed; (2) he was never given an extra pillow ordered for him by a doctor; (3) one of his prescriptions went unfilled for a period of time in December 2002; and(4) his muscle relaxer medication was not cancelled for six days after the prison health services unit received an advisory regarding a possible negative reaction between his asthma

inhaler and the medication. Although plaintiff did not allege defendant Hertel's personal involvement in these complained of acts, he has been allowed to proceed against him for the sole purpose of discovering the names of the individuals who were involved.

Plaintiff was denied leave to proceed in forma pauperis on his claim that Nurse Sarah VanCalster was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment when she failed to properly deliver his muscle relaxer medication on two occasions in April 2002, and on his claim that defendant Hertel was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment when she rejected another doctor's recommendation that plaintiff receive a particular medical diagnostic procedure. In addition, he was not allowed to proceed against Stephen Puckert, the Director of the Department of Corrections, and Daniel Bertrand, the warden of the Green Bay Correctional Institution, because plaintiff's allegations were insufficient to make out a claim that these individuals violated his constitutional rights.

Now plaintiff has filed a "Motion to Amend Order," in which he asks the court to reconsider its decision to dismiss his claims against former defendants VanCalster, Bertrand and Puckett. However, nothing in plaintiff's motion to amend convinces me that I erred in refusing to allow him to proceed against these former defendants. Indeed, I gave considered attention to the matters addressed in the May 12 order before rendering my decision. I do

not intend to rehash the matters again. If plaintiff believes this court erred in its decision, he is free to raise the matter on appeal when the case is complete.

IT IS ORDERED that plaintiff's motion to amend the May 12, 2003, to allow him to proceed against former defendants VanCalster, Bertrand and Puckett is DENIED.

Entered this 22nd day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge