

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

JUAN VILLANUEVA-MONROY,

Plaintiff,

v.

DOCTOR J. REED and
V. JONES, Hospital Administrator,

Defendants.

ORDER

05-C-214-C

On June 7, 2005, I denied plaintiff leave to proceed in forma pauperis in this action brought under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), and 28 U. S.C. § 1331. I concluded that plaintiff's complaint that prison medical staff refused to prescribe the treatment he wanted for a fungus on the nails of his hands and feet did not rise to the level of an Eighth Amendment violation. Subsequently, plaintiff moved to vacate the judgment of dismissal and reopen the case. His motion included a proposed amended complaint in which he alleged that defendants Reed and Jones denied him treatment for a painful mutilating skin disease on his hands that is causing his bones to deform. In an order dated June 24, 2005, I concluded that plaintiff's allegations

in the amended complaint were sufficient to state a claim of deliberate indifference to a serious medical need against defendants Reed and Jones. Therefore, I vacated the judgment and allowed plaintiff to proceed against these defendants. I noted, however, that although plaintiff's proposed complaint did not contain a request for relief, I would consider that plaintiff was seeking the same relief he had sought in his original complaint, which was an order requiring defendants to treat his medical problem.

Now plaintiff has submitted a second proposed amended complaint. In this document, plaintiff repeats his allegations that defendants Reed and Jones failed to treat his skin disease. However, he has added a request for declaratory, injunctive and monetary relief. In addition, plaintiff has added "John Does" to the caption of his complaint and the following allegations of wrongdoing, presumably against the Does:

(17). At one point, plaintiff was told to purchase medications at the prison inmate commissary.

(18). It is the practice of BOP at F.C.I. Oxford and the medical department, the defendants, to force inmates to purchase certain needed medications from the inmate commissary.

In his request for relief related to these allegations, plaintiff asks the court to declare that "F.C.I. Oxford and its medical department, the defendants, in forcing inmates to purchase needed medications from the inmate commissary violates 18 U.S.C. §§ 4005, 4006, 4007, 4042(a)(2)." Also, plaintiff asks for injunctive relief against defendants Reed, Jones "or

their agents” to “immediately stop and cease forcing (requiring) inmates including plaintiff to purchase their own needed medication, when medical staff has indicated that said medications is needed for that inmate’s medical treatment” and “immediately start supplying F.C.I. Oxford inmates including plaintiff with all and every medication that that inmate might need for his medical needs.”

I will allow plaintiff to proceed on his second amended complaint with respect to his original claim against defendants Reed and Jones, because the amendment includes a more comprehensive request for relief against them. However, I will not allow him to proceed against the John Doe defendants or defendants Reed and Jones on his claim that it violates his constitutional rights or his rights under federal law to require him to purchase certain medications from the commissary. Plaintiff does not suggest that he did not have money in his prison account to pay for the item or items he was told to purchase from the commissary. Indeed, from the trust fund account statement plaintiff filed in this case, it appears that he earns between three and four hundred dollars a month from his job with UNICOR. Nothing in the statutes plaintiff cites prohibits the federal government from requiring prisoners with money to use their own money to purchase pharmaceutical items offered for sale in the prison commissary. Nor does it violate the Eighth Amendment prohibition against cruel and unusual punishment to require prisoners who earn wages in prison jobs to pay for certain costs of their care.

ORDER

IT IS ORDERED that

1. Plaintiff's proposed second amended complaint is accepted for filing in this case and will be considered the operative pleading. Although plaintiff served the second amended complaint by mail on defendants Reed and Jones, a courtesy copy is enclosed with this order to the office of the United States Attorney for the Western District of Wisconsin, which will be representing the defendants.

2. Plaintiff's claim in the second amended complaint that the John Doe defendants and defendants Reed and Jones violated his rights under the Eighth Amendment and federal law when they made him pay for pharmaceutical items carried in the prison commissary is DISMISSED pursuant to 28 U.S.C. § 1915A on the ground that the claim is legally meritless.

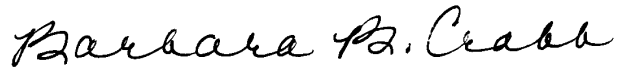
3. The John Doe defendants are DISMISSED from this action.

4. Defendants Reed and Jones may have an enlargement of time to September 9,

2005, in which to serve and file a responsive pleading to the second amended complaint.

Entered this 13th day of July, 2005.

BY THE COURT:

A handwritten signature in cursive script, reading "Barbara B. Crabb".

BARBARA B. CRABB

District Judge