

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

ROGER DALE GODWIN,

Plaintiff,

v.

JIM SUTTON and MATTHEW FRANKS,

Defendants.

ORDER

05-C-493-C

Plaintiff Roger Dale Godwin is proceeding in this case on a claim that defendants Jim Sutton and Matthew Frank violated his rights under the Eighth Amendment by failing to protect him from a sexual assault that occurred in his prison cell on June 18, 2005. Now plaintiff has filed a document titled "Petitioner's Motion to Amend Complaint." In this motion, plaintiff asks for permission to amend his complaint to add a claim that defendant Jim Sutton issued him a false conduct report in retaliation for plaintiff's filing of this lawsuit against him. In addition, plaintiff appears to want to add a claim against Warden Greg Gram, who plaintiff says is guilty of providing defendant Sutton with prohibited confidential information about the assault. Plaintiff's motion to amend his complaint will be denied.

In order for the parties to be clear about what claims are being raised in a lawsuit,

there can be only one document that constitutes the operative pleading in a lawsuit. Plaintiff's motion cannot be construed as a proposed amended complaint because it does not include certain facts plaintiff put in his original complaint that are critical to stating a claim against the original defendants. In other words, plaintiff's motion is not a document that may be substituted for the original complaint as the operative pleading in the case.

Even if plaintiff had submitted a separate amended complaint, I would not allow him to proceed in this lawsuit on his claim against Warden Greg Gram or his First Amendment retaliation claim against defendant Sutton. A case would become unduly complicated if the court were to allow a plaintiff to add to an existing lawsuit new and separate claims as they arise. Therefore, with one exception, it is this court's policy to require plaintiffs to raise new claims and claims of retaliation in a lawsuit separate from the lawsuit that is alleged to have provoked the retaliation. The exception applies when it appears that the plaintiff's allegations of retaliation show that the retaliatory acts directly, physically impair the plaintiff's ability to prosecute his lawsuit. Here, plaintiff's allegation that defendant Sutton has issued him a "false conduct report" does not suggest that plaintiff is being physically impaired in his ability to prosecute this lawsuit. Therefore, if he intends to pursue his retaliation claim or his claim against Warden Gram, he will have to do so in a lawsuit separate from this one.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED.

Entered this 19th day of October, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge