

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

JAMES JENKINS,

Petitioner,

v.

FREDDRICK WILSON and
MR. BANKSON, Dane County Deputy Sheriffs,

Respondents.

ORDER

05-C-609-C

On October 31, 2005, I granted plaintiff James Jenkins leave to proceed in this civil action against defendants Fredrick Wilson and Mr. Bankson, who plaintiff alleged were deputy sheriffs with the Dane County Sheriff's Department who had used excessive force against him in violation of his constitutional rights. Now, the United States Marshal has filed "Process Receipt and Return" forms showing that he has been unable to serve either defendant with plaintiff's complaint. According to the notations on the forms, there are no persons named Fredrick Wilson and Mr. Bankson working as deputy sheriffs at the Dane County jail. The Marshal notes that he has learned that there are deputies at the jail named Tim Bergtson and James Wilson, who may be the deputies plaintiff intended to sue.

The Court of Appeals for the Seventh Circuit has ruled that a prisoner is required to furnish the United States Marshals Service with the information necessary to identify prison employee defendants. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990). It is not up to the marshal to decide whether a person whose name is different from the name provided by the plaintiff might be the person the plaintiff intended to sue. Plaintiff will have to investigate this matter and correct the names of the defendants if they need to be corrected before I will ask the Marshal to make another attempt to serve his complaint.

ORDER

IT IS ORDERED that plaintiff may have until December 9, 2005, in which to notify the court whether the correct identities of the defendants in this action are James Wilson and Tim Bergtson rather than Freddrick Wilson and Mr. Bankson. If plaintiff fails to identify the defendants properly by December 9, 2005, I will dismiss his case for his failure

to properly identify the persons he alleges violated his constitutional rights so that they may be served with his complaint.

Entered this 23rd day of November, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge