

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

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CANYON A. THIXTON,

Plaintiff,

v.

ORDER

05-C-620-C

GERALD BERGE (in his individual capacity);  
JON LITSCHER (in his individual capacity);  
OFFICER ESSER (in his individual capacity); and  
OFFICER LINJER (in his individual capacity),

Defendants.  
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Plaintiff Canyon Thixton is proceeding in this case on claims that (1) defendants Litscher and Berge violated his Eighth Amendment rights by depriving him of clothing, personal hygiene items, bedding, a sink and toilet for a period of 58 days; and (2) defendants Esser and Linjer beat plaintiff on July 10, 2001 and that defendants Berge and Litcher knew of and condoned the beating. Although plaintiff had named Brad Hompe and Brian Kool as defendants in his first, second and third amended complaints, none of those complaints contained allegations suggesting what Hompe and Kool had done to violate plaintiff's constitutional rights. Therefore, on February 22, 2006, I dismissed Hompe and Kool from

the case. Now, following a preliminary pretrial conference in which the magistrate judge has scheduled a trial date and deadlines for completing discovery and filing dispositive motions, plaintiff has filed a fourth amended complaint. The proposed pleading is accompanied by a letter advising the court that opposing counsel has no objection to the amendment and asking that the court screen the amendment as required by 28 U.S.C. § 1915A.

In the preliminary pretrial conference order, the magistrate judge noted that additional amendments to the pleadings would not be allowed without leave of the court. Therefore, I construe plaintiff's request for a screening order as a motion to amend the complaint. According to plaintiff, the purpose of the fourth amended complaint is to put Brad Hompe and Brian Kool back into the lawsuit with respect to his claim that he was deprived of personal hygiene items, bedding, a sink and toilet for a period of 58 days. In particular, plaintiff alleges that "Hompe and/or Kool devised of and/or implemented the particulars of the program under which [plaintiff] was deprived of clothing, personal hygiene items, and bedding and was denied the use of a toilet or sink . . . ." This is the only change that plaintiff makes to his third amended complaint.

In the February 22, 2006 order allowing plaintiff to amend his complaint a third time to add defendants Esser and Linjer, I expressed concern about the length of time it had taken plaintiff to determine "who the wrongdoers are in this case." I cautioned plaintiff then that I would not permit the case to be stalled further by delays in serving the complaint on Esser

and Linjer. Although it is perplexing that plaintiff has waited another four months to clarify his claim against defendants Hompe and Kool, I will allow the fourth amended complaint as the operative pleading in this case on one condition only: that the schedule for moving this case to resolution put in place in the magistrate judge's April 27, 2006 preliminary pretrial conference order remains fixed.

#### ORDER

IT IS ORDERED that a decision whether to grant plaintiff's motion for leave to file a fourth amended complaint is STAYED until June 20, 2006, to allow plaintiff to confirm, in writing, with a copy to opposing counsel, that the addition of defendants Hompe and Kool will have no effect on the plaintiff's ability to prepare to defend against a motion for summary judgment or meet any other deadline established in the magistrate judge's April 27, 2006 preliminary pretrial conference order. If, by June 20, 2006, such confirmation is not received by the court, plaintiff's motion to file a fourth amended complaint will be denied.

Entered this 14th day of June, 2006.

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