

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

SHAROME ANDRE POWELL,

Petitioner,

ORDER

v.

06-C-58-C

SERGEANT FINK, LIEUTENANT DURDIN,
CORRECTIONAL OFFICER KOPEHAMER,
CAPTAIN SEAN SALTER, JANEL NICKEL,
Security Director, GREGORY GRAMS, Warden,
NURSE HAHNISCH and JOHN DOES 1-10,

Respondents.

Petitioner Sharome Andre Powell, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, has submitted a proposed complaint, together with 174 pages of documents that appear to be intended as evidence to prove the claims raised in the complaint, a “Motion for Reinstatement of Time Limits” and a motion for appointment of counsel. Petitioner requests leave to proceed in forma pauperis. From his trust fund account statement, it appears that petitioner presently has no means with which to pay an initial partial payment of the \$250 fee for filing his complaint. However, petitioner should be aware that he is obligated to pay the \$250 filing fee, even if this court determines that he will

not be permitted to proceed with his complaint in forma pauperis and even if he does not presently have funds with which to pay the fee. 28 U.S.C. § 1915(b)(1). His account will be monitored and the fee must be taken in monthly installments when the funds exist. Accordingly, petitioner's complaint will be taken under advisement for screening pursuant to 28 U.S.C. § 1915(e)(2) to determine whether the case must be dismissed either because the complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief.

With respect to petitioner's "Motion of Reinstatement of Time Limits," it appears that petitioner is asking this court to waive the 120-day deadline within which a person intending to sue under state law must provide notice to the state of his injury and claim. Because this court has no authority to waive state law requirements for filing a notice of claim, petitioner's motion will be denied.

With respect to the evidentiary materials petitioner submitted with his complaint, I am returning them to petitioner so that he may submit them at a later time in connection with a motion requiring evidentiary support or at trial. In his complaint, petitioner is alleging that in early July 2005, respondents used excessive force against him and then placed him in a filthy cell for several hours. The materials petitioner has submitted as "exhibits" include affidavits from witnesses to the alleged use of excessive force, as well as numerous communications petitioner wrote to prison officials after the incident. These documents are

not properly made a part of petitioner's complaint. Pursuant to Fed. R. Civ. P. 8, a complaint should consist of a "short and plain statement of the claim" and a request for the relief the petitioner wants. Petitioner's complaint clearly describes the basis for his claims, recounts the facts basic to the claims and requests money damages and injunctive relief. Because there is no need for petitioner to attempt to prove his case with evidentiary materials at the pleading stage, and because the addition of these materials to petitioner's complaint violates Rule 8, they will not be considered at this time.

Petitioner's motion for appointment of counsel also will be denied. Although petitioner has made small procedural errors in the bringing of his lawsuit, he is not unfamiliar with court procedures. He already has litigated one other lawsuit in this court, Powell v. Kingston, 05-C-112-C. He has a strong command of the English language and writes clearly. Moreover, as noted earlier, his claims are straightforward and involve a single past incident of alleged wrongdoing. Given the lack of complexity to petitioner's claims, I have no doubt that if he is permitted to proceed following the screening of his complaint, he will be able to litigate the lawsuit on his own.

ORDER

IT IS ORDERED that petitioner's complaint is taken under advisement for screening pursuant to 28 U.S.C. § 1915(e)(2). Petitioner will be notified promptly when the screening

decision has been made.

Further, IT IS ORDERED that petitioner's motions for appointment of counsel and for "reinstatement of time limits" are DENIED.

Enclosed to petitioner are the original evidentiary materials he filed with the court, which he may submit in connection with a motion for summary judgment or at trial. A copy of the documents will be retained in the court's file for record purposes only.

Entered this 2nd day of February, 2006.

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