

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

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SHAROME ANDRE POWELL,

Plaintiff,

v.

SERGEANT FINK, LIEUTENANT DURDIN  
and CORRECTIONAL OFFICER KOPEHAMER,

Defendants.  
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ORDER

06-C-58-C

Plaintiff has written an undated letter received by the court on March 22, 2006, in which he asks for clarification whether he has been allowed to proceed against defendants “in their individual and full capacity.” I construe the letter as a second motion for clarification of the order entered in this case on February 7, 2006, in which I screened plaintiff’s complaint pursuant to 28 U.S.C. § 1915(e)(2). In his second motion for clarification, plaintiff asks whether he has been allowed to proceed on his claims for injunctive relief against the defendants, in addition to his claim for monetary relief. The answer is “no.”

Plaintiff is proceeding in this case on a single claim; that his Eighth Amendment rights

were violated by defendants' use of excessive force against him on July 8, 2005. In circumstances such as this, the plaintiff is allowed to proceed against the defendants in their individual capacities for the purpose of recovering money damages if the court or a jury ultimately concludes he is entitled to judgment in his favor. However, plaintiff has not been allowed to proceed against defendants in their "official" capacities, which is what I suspect plaintiff means when he asks to proceed against defendants in their "full" capacity. To the extent that plaintiff may have wanted to assert a claim for money damages against defendants in their official capacities, his lawsuit is an action against the state, and a state is not a "person" subject to a damages action under 42 U.S.C. § 1983. Williams v. State of Wisconsin, 336 F.3d 576 (7th Cir. 2003); Lapides v. Bd. of Regents, 535 U.S. 613, 617 (2002).

Although official-capacity suits against state officials seeking prospective relief (that is, relief preventing future harm) ordinarily are permitted under § 1983 and are not barred by the Eleventh Amendment, plaintiff's requests for injunctive relief cannot be granted because there is no live controversy requiring injunctive relief. Plaintiff's request for injunctive relief seeks an order requiring prison officials not named as parties to the lawsuit to "place security cameras on all of disciplinary/segregation building number 1 tiers" and "suspen[d] all parties found guilty or liable for such negligence."

As an initial matter, this court does not have the authority to order the state to

suspend state employees from their jobs. Nor is it likely this court would order the placement of cameras throughout particular parts of an institution in response to one individual's claim that certain guards used excessive force against him. The appropriate injunctive relief for a plaintiff claiming ongoing beatings by the defendants would be an order enjoining the defendants from engaging in the unconstitutional behavior.

In any event, plaintiff is not claiming ongoing unconstitutional behavior. To satisfy Article III's "case or controversy" requirement for the purpose of obtaining injunctive relief, a plaintiff must allege facts sufficient to show either that the injuries he complains of are continuing or that he is under the immediate threat that the injuries complained of will be repeated. Sierakowski v. Ryan, 223 F.3d 440, 444 (7th Cir. 2000) ("[I]n order to invoke Article III jurisdiction a plaintiff in search of prospective equitable relief must show a significant likelihood and immediacy of sustaining some direct injury."). As the Supreme Court explained in City of Los Angeles v. Lyons, 461 U.S. 95 (1983), "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Id.* at 102. This rule applies to claims for declaratory as well as injunctive relief. Robinson v. City of Chicago, 868 F.2d 959, 966 n.5 (7th Cir. 1989) ("The declaratory relief statute is not an independent basis of jurisdiction and requires an 'actual controversy'.").

Because plaintiff has alleged a one-time only incident occurring nine months ago

involving defendants' use of excessive force, it would be unreasonable to conclude that plaintiff faces any threat of ongoing injury from defendants arising out of the same circumstances. Therefore, plaintiff's motion for clarification will be granted and his requests for injunctive relief will be dismissed as moot.

ORDER

IT IS ORDERED that plaintiff's second motion for clarification of the February 7, 2006 order is GRANTED.

Further, IT IS ORDERED that plaintiff's requests for injunctive relief are DISMISSED from the complaint as moot or as relief this court cannot give.

Entered this 23d day of March, 2006.

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