

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

LUIS VASQUEZ,

Plaintiff,

v.

ORDER

06-cv-00743-bbc

STEVEN SCHUELER, Security Supervisor, Capt.;
CURT JANSSEN, Security Supervisor, Capt.;
CAPT. GEMPELER, Security Supervisor;
OFFICER WAYNE BAUER, Lieutenant;
GARY ANKARLO, Ph.D., PSUS;
SGT. JORDAN PREIST; SGT. JEFF MEYER;
SGT. ROBERT GUTJAHR; SGT. EMIL TONY;
SGT. BEN HILBERT; OFFICER PLYER KMIECIK;
OFFICER JOHN NICKEL; MARY ANN GORSKE;
TIMOTHY PRICE; JOSHUA FLETCHER; SCOTT
ROSS; JASON ROSENTHAL; CO KEYS; CO PONTOW;
BRETT MIERZEWJESKI and JEFF ROLINS,

Defendants.

In accordance with George v. Smith, No. 07-1325, --- F.3d ---, 2007 WL 3307028 (7th Cir. Nov. 9, 2007), I reviewed all of plaintiff's claims in this case and determined that they must be divided into four separate lawsuits. In an order dated November 29, 2007, I asked plaintiff to tell this court which of these lawsuits he wished to pursue. Plaintiff has

not complied with this order but instead has submitted a letter, which I construe as a motion for clarification. In his motion, plaintiff says that in summarizing his claims, the court omitted two of them: a claim the defendant Ben Hilbert directed an unconstitutional use of force on August 17, 2005 and a claim that defendant Wayne Bauer used a taser gun on him on November 3 in retaliation for plaintiff's threat to file a lawsuit. Before he chooses the lawsuit or lawsuits to prosecute, plaintiff asks that the court inform him whether and how the omitted claims would fit into the four lawsuits.

Plaintiff is correct in noting that I omitted these two claims from my summary.

Under Fed. R. Civ. P. 18, they may be grouped in to the four lawsuits as follows:

Lawsuit #1: Defendant Ben Hilbert allegedly directed defendants Mike Biersack, Michael Passig and Jaime Fuecht to use excessive force against plaintiff on August 17, 2005. Defendants Jamie Fuecht, Steven Schueler, Ben Hilbert, Mary Ann Gorske, Timothy Price and Jordan Preist denied him medical care for injuries he sustained in the August 17 incident.

Lawsuit #2: Defendants Scott Ross, Jason Rosenthal, CO Keys, CO Pontow, Brett Mierzewjeski, Wayne Bauer, Jeff Rolins, Deborah Gempeler and Jeff Meyer allegedly conducted an unconstitutional manual body cavity search on November 3, 2006. During the search, defendant Bauer allegedly used a taser gun against plaintiff in retaliation for plaintiff's threat to file a lawsuit. Defendant Ankarlo allegedly refused to provide plaintiff with mental health treatment after the November 3 incident.

Lawsuit #3: Defendants John Nickel and Joshua Fletcher allegedly fondled plaintiff's genitals while conducting a manual body cavity search of him on August 21, 2006; defendants Plyer Kmiecik Curt Janssen, Robert Gutjahr and Emil Tony allegedly failed to intervene to stop the search.

Lawsuit #4: Defendant Jody Lapine allegedly was deliberately indifferent to his health by denying him psychotropic medication for approximately one week in June 2006.

I repeat the instructions I gave plaintiff in the November 29 order. Plaintiff must choose which of these lawsuits he wishes to pursue. If he chooses only one lawsuit, I will apply toward that lawsuit the initial partial payment plaintiff made in this case and any later installments he has made. However, for each additional lawsuit plaintiff chooses, he must pay an additional filing fee, beginning with an initial partial payment in the amount of \$4.60 (the partial fee payment that was calculated from plaintiff's trust fund account statement at the time he filed this action) and the remainder of the filing fee in installments as required by 28 U.S.C. § 1915(b)(2). If plaintiff chooses to dismiss any of his lawsuits voluntarily, the dismissal will be without prejudice, so plaintiff would be able to bring it in another lawsuit, at another time.

Plaintiff has brought one other matter before the court. Accompanying his motion for clarification is a motion to "supplement" his complaint with "repeated incidents" and "continuous violations." That motion will be denied. It is pointless to consider expanding any of plaintiff's lawsuits further until plaintiff chooses which lawsuits he wishes to pursue.

ORDER

1. Plaintiff Luiz Vasquez's motion for clarification is GRANTED.

2. Plaintiff's motion to supplement his complaint is DENIED.

3. Plaintiff may have until December 21, 2007, in which to advise the court and defendants on which one of the separately numbered lawsuits identified in the body of this opinion he wishes to proceed. As to this one lawsuit, plaintiff's existing case number and fee obligation will be applied.

4. Plaintiff may have until December 21, 2007, in which to advise the court which of the remaining separately numbered lawsuits he will prosecute, if any, and which he will withdraw voluntarily.

5. For any lawsuit (other than the one plaintiff chooses to keep assigned to this case number) that plaintiff dismisses voluntarily, he will not owe a filing fee.

6. For any lawsuit (other than the one plaintiff chooses to keep assigned to this case number) that plaintiff advises the court he intends to prosecute, plaintiff will owe a separate \$350 filing fee, starting with an initial partial payment of \$4.60, which he must pay by December 27, 2007. The payment(s) may be submitted by a check or money order made payable to the clerk of court. The remainder of the filing fee(s), will be collected in installments in accordance with 28 U.S.C. § 1915(b)(2).

7. If, by December 21, plaintiff fails to respond to this order, I will enter an order dismissing the lawsuit as it presently exists with prejudice for plaintiff's failure to prosecute.

8. All other proceedings in this action are STAYED pending plaintiff's response to

this order.

Entered this 10th day of December, 2007.

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