

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

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ROBERT D. McGRATH,

Plaintiff,

OPINION and ORDER

v.

06-C-343-C

LENARD WELLS and  
LAURA MOFFIT,

Defendants.  
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In this civil action for monetary relief, plaintiff Robert D. McGrath, a former prisoner at the Oakhill Correctional Institution in Oregon, Wisconsin, contends that his constitutional rights were violated when defendant Lenard Wells singled him out for differential treatment in connection with his consideration for parole and defendant Laura Moffit vindictively altered the date of his offense on his judgment of conviction in order to make him ineligible for nondiscretionary parole release. Although plaintiff paid the full fee for filing his complaint, he was still incarcerated at the time he filed this lawsuit. Therefore, his complaint was screened under 28 U.S.C. § 1915A.

In an order dated July 17, 2006, I granted plaintiff leave to proceed on his claim

against defendant Wells and stayed a decision whether he could proceed against defendant Moffit because it was not clear whether plaintiff's claim against her could be brought under § 1983 at this time. From a review of publicly available records, I determined that plaintiff may have been released from prison after he filed his complaint, so I asked him to inform the court whether he remained incarcerated.

Now, plaintiff has written to the court stating that he is no longer incarcerated and disclosing his new address. Because of the letter's timing, it is probable that plaintiff sent it to notify the court of his new address rather than as a response to the court's July 17 order, which was mailed to the Oakhill Correctional Institution. In order to insure that plaintiff receives the court's July 17 order, I am enclosing another copy of that order to plaintiff with this order.

For reasons discussed at length in the July 17 order, plaintiff's release removes the procedural barriers to his claim against defendant Moffit. Consequently, he will be granted leave to proceed on his claim against her. The next step is for plaintiff to serve his complaint on defendants Wells and Moffit. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendants well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint on defendants, I am enclosing with this memorandum a copy of document titled "Procedure for Serving a Complaint on Individuals in a Federal Lawsuit." In addition, I am enclosing to plaintiff an extra copies of his complaint, copies of this order and the order dated July 17, 2006, and forms he will need to send to defendants in accordance with the procedures set out in Option 1 of the memorandum.

#### ORDER

IT IS ORDERED that

1. The stay entered in this action on July 17, 2006 is LIFTED.
2. Plaintiff is GRANTED leave to proceed on his claim that defendant Moffit violated his right to substantive due process by arbitrarily altering the offense dates listed on his judgment of conviction.
3. Plaintiff should promptly serve copies of this order, the July 17, 2006 order and his complaint on defendants Wells and Moffit and file proof of service of his complaint as soon as service has been accomplished. If, by September 25, 2006, plaintiff fails to submit proof of service of his complaint on defendants or explain his inability to do so, I will direct

plaintiff to show cause why his case should not be dismissed for lack of prosecution.

Entered this 26th day of July, 2006.

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