

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

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DWAYNE ALMOND,

Petitioner,

ORDER

v.

06-C-557-C

STATE OF WISCONSIN, GREEN  
BAY WARDEN OF PRISON, MR.  
CAPT. Z of prison, CO II CAUL of  
prison, MR. DR. PSYCHIATRIST  
MCQUEENEY, MS. DR. MARY BREEN,  
MS. SARAH COOPER, Supervisor, MR.  
I.C.E. of prison, MICHAEL J. MOHR of  
Inmate Complaint System,

Respondents.

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This is a proposed civil action for monetary relief under 42 U.S.C. § 1983. Petitioner Dwayne Almond, an inmate at the Green Bay Correctional Institution in Green Bay, Wisconsin, contends that respondents violated his constitutional rights under the Eighth Amendment of the United States Constitution by using excessive force against him and denying him appropriate medical attention. I note that petitioner filed five other lawsuits on the same day he filed this action. Petitioner's complaints in Case Nos. 06-C-556-C, 06-

C-558-C, 06-C-559-C, 06-C-560-C and 06-C-561-C will be addressed in separate orders.

In orders dated August 23, 2006, I denied petitioner leave to proceed in Case Nos. 06-C-447-C, 06-C-448-C and 06-C-449-C because the claims he raised in those lawsuits were legally meritless. Consequently, I issued petitioner one strike for each of his meritless lawsuits, as I was required to do under 28 U.S.C. § 1915(g). As I explained to petitioner in an order dated August 24, 2006, in Case No. 06-C-450-C, because he has accumulated three strikes under § 1915(g), he may not seek pauper status in this or any future civil action or appeal “unless [he] is under imminent danger of serious physical injury.” Therefore, my review of petitioner’s complaint is limited to determining whether he has alleged that he is in imminent danger of such injury. Because he has not done so, petitioner’s request to proceed in forma pauperis will be denied.

In his complaint, petitioner alleges the following facts.

#### ALLEGATIONS OF FACT

Petitioner Dwayne Almond is a prisoner at the Green Bay Correctional Institution in Green Bay, Wisconsin.

On May 31, 2006, respondent Captain Z. approached petitioner’s cell, requesting that petitioner return a meal tray that had been in the cell for four days. Petitioner had recently been denied medical treatment for a heat stroke he had suffered, and was irritated that

respondents seemed more interested in retrieving a tray than in providing him with medical care. Petitioner expressed his feelings to respondent Captain Z. In response, respondent Captain Z told other prison officials to “suit up” for a cell extraction.

Petitioner “was not refusing really to give up the tray at all,” so respondent Capt. Z left. Meanwhile, five prison correctional officers returned to petitioner’s cell wearing “all black.” One of them, respondent Caul, placed a “plastic shell” into petitioner’s cell. (It is not clear what this “shell” was intended to do.)

Petitioner had recently suffered an injury to his right hand that was just beginning to heal. As petitioner handed his tray out the trap of his door, food from the tray dropped onto respondent Caul’s clothing. Respondent Caul reacted by slamming the trap shut on petitioner’s injured hand, causing it to swell. Although petitioner requested medical assistance, he was not permitted to see anyone in the prison health services unit for four days. When he finally received medical attention, he was given pain medication and X-rays. However, he was not treated by a doctor.

#### OPINION

Petitioner alleges that on May 31, 2006, respondent Caul slammed his fingers in a door trap. Afterward, petitioner was denied medical attention for a period of four days, after which he was given an X-ray and provided with pain medication. Petitioner seeks only

money damages for the one-time instance of alleged excessive force.

As discussed above and in the court's previous opinions, because petitioner has filed three legally frivolous lawsuits, he is barred from proceeding in forma pauperis unless he alleges that he is in imminent danger of serious physical harm. His allegations in this case do not suggest that he is in ongoing danger of continued harm; consequently, his request for leave to proceed in forma pauperis will be denied. Nevertheless, petitioner must pay the \$350 fee for filing this action, whether or not he intends to pursue it. If petitioner does not pay the fee by October 20, 2006, the clerk of court is directed to close this case and notify the warden of the Green Bay Correctional Institution of petitioner's obligation to pay the fee. It will be up to the warden to determine how amounts deposited to petitioner's account, if any, might be utilized to pay petitioner's debt to this court, even though the installment provision of 28 U.S.C. § 1915(b)(2) does not apply to petitioner. Dallas v. Gamble, slip op. WL 2371346 (W.D. Wis. Aug. 14, 2006).

#### ORDER

IT IS ORDERED that petitioner Dwayne Almond's request to proceed in forma pauperis is DENIED.

Further, IT IS ORDERED that petitioner may have until October 20, 2006, in which to pay the \$350 fee for filing this action. If, by October 20, 2006, petitioner fails to pay the

required filing fee, the clerk of court is directed to close this case and notify the warden of the Green Bay Correctional Institution of petitioner's obligation to pay the filing fee.

Entered this 4th day of October, 2006.

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