

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

JAMES G. DUDGEON,

Plaintiff,

v.

JOHN FIORELLO,

Defendants.

ORDER

06-C-563-C

Plaintiff has filed a motion for clarification, in which he asks whether the Wisconsin Department of Correction remains a defendant in this action. The answer to this question is that the department has never been a defendant. The caption of plaintiff's complaint states, "Matthew Frank, Secretary, Wisconsin Department of Corrections." I construed the inclusion of the department as a description of Frank's position, not as a separate defendant.

I understand by plaintiff's motion that he did intend to sue the department independently. However, there is no need to amend the caption to show the department as a defendant, because such an amendment would be futile. Plaintiff brings his claim under 42 U.S.C. § 1983, which authorizes actions against any "person" that violates the constitutional rights of another. The Supreme Court has held that neither states nor state

agencies are “persons” that can be sued under § 1983, Will v. Michigan Dept. of State Police, 491 U.S. 58, 64 (1989). See also Ryan v. Illinois Dept. of Children and Family Services, 185 F.3d 751, 758 (7th Cir. 1999). Rather, plaintiffs in a civil rights action under § 1983 must seek relief from individual officials, such as defendant Fiorello.

ORDER

IT IS ORDERED that plaintiff James Dudgeon’s motion for clarification is construed as a motion to amend to add the Wisconsin Department of Corrections as a defendant and DENIED as futile because the department cannot be sued under 42 U.S.C. § 1983.

Entered this 12th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge