

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

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ALGEN M. LAMON,

Plaintiff,

v.

ORDER

PAUL H. BELOUNGY, GREGORY R.  
HUNSADER and JOHN FAHRNEY,

06-C-601-S

Defendants.

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Upon receipt of plaintiff's partial filing fee in the amount of \$11.62, the Court addresses the merits of plaintiff's complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff alleges that on November 13, 2004 when he was incarcerated at the New Lisbon Correctional Institution he was injured by the excessive force of defendant Paul H. Beloungy. He also alleges that he was falsely arrested by defendant John Fahrney in Beloit, Wisconsin in 2001. Further, he alleges that in his criminal trial his attorney defendant Gregory Hunsader was ineffective.

To state a claim under 42 U.S.C. § 1983 plaintiff must allege that a person acting under color of state law violated his Constitutional rights. He has not made these necessary allegations against defendant Hunsader. Accordingly, he will not be allowed to proceed against defendant Hunsader.

It is possible that plaintiff can prove a set of facts that support a Fourth Amendment false arrest claim against defendant Fahrney. It is also possible that plaintiff may be able to prove a set of facts that would support an Eighth Amendment excessive force claim against defendant Beloungy. Plaintiff will be allowed to proceed on these claims.

Plaintiff has moved for appointment of counsel. This motion will be stayed until a responsive pleading is filed.

ORDER

IT IS ORDERED that plaintiff is allowed to proceed on his Fourth Amendment claim against defendant John Fahrney and on his Eighth Amendment claim against defendant Paul Beloungy.

IT IS FURTHER ORDERED that plaintiff's claims against defendant Gregory Hunsader are DISMISSED.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel is STAYED until a responsive pleading is filed.

The summons and complaint are being delivered to the United States Marshal for service on defendant John Fahrney at the Beloit Police Department, 100 State Street, Beloit, Wisconsin, 53541 and on defendant Paul Beloungy at the New Lisbon Correctional Institution, 2000 Progress Drive, New Lisbon, WI, 53950.

Entered this 2<sup>nd</sup> day of November, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge