

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

STEPHEN WENDELL JONES,

Plaintiff,

v.

RICK RAEMISCH,
in his official capacity;
WARDEN R. SCHNEITER, WSPF;
G. BOUGHTON, a Security Director;
B. KOOL, a Unit Manager; and
P. HUIBREGTSE, Under Warden,

Defendants.

ORDER

07-C-141-C

Plaintiff is proceeding on a claim that defendants are subjecting him to a substantial risk of serious harm in violation of the Eighth Amendment by placing him where he can be attacked by other prisoners who wish to harm him. Thus far, the road toward a resolution of the case has been a bumpy one. Plaintiff has filed multiple unsuccessful motions for a preliminary injunction, followed by equally unsuccessful motions for reconsideration.

Plaintiff has finally abandoned that approach, replacing it with attempts to amend his complaint to broaden the scope of his lawsuit. He made his first attempt last month,

seeking to add 13 defendants and new claims about being forced to wear leg irons, being denied various education materials and staff retaliation. I denied plaintiff's motion for leave to amend his complaint (and a subsequent motion for reconsideration) both because he failed to follow this court's procedure for filing amended complaints and because his new claims did not include allegations of imminent harm, as required by 28 U.S.C. § 1915(g). (Because three of plaintiff's previous cases were dismissed as legally frivolous or for failure to state a claim upon which relief may be granted, he is prohibited under § 1915(g) from proceeding in forma pauperis any claims that do not involve "imminent danger of serious physical injury." Further, because plaintiff is proceeding in forma pauperis in this case, he may not amend his complaint to include claims that do not involve a threat to his health or safety.)

Plaintiff has now filed another motion for leave to amend his complaint. This time, plaintiff's proposed amended complaint is in substantial compliance with this court's procedures. (Plaintiff has clearly identified the proposed changes in his proposed amended complaint.) In addition, he has omitted the new claims he included in his first proposed amended complaint. In his new proposed complaint, plaintiff's primary change is the addition of 11 defendants to the claim on which he is proceeding.

Unfortunately for plaintiff, his latest motion for leave to amend must be denied as well because his proposed amendment is premised on a misunderstanding of his claim.

Again, plaintiff is proceeding on a claim for injunctive relief that defendants are violating his Eighth Amendment rights by housing him under conditions that are subjecting him to a substantial risk of harm. Thus, his claim is forward looking and directed at those defendants who have the authority to change his conditions of confinement to make them safer.

All of plaintiff's proposed new defendants are lower ranking officers who plaintiff believes in the past have placed him in dangerous situations in isolated instances. (The incident to which plaintiff points most often involved another prisoner who attempted (and failed) to assault plaintiff during a class.) These officers are not proper defendants in this case because plaintiff's claim is not about past incidents in which defendants placed plaintiff in harm's way but the risk of harm has since abated. Rather, plaintiff's claim is that he is at risk *right now*, that defendants are aware of the risk and that defendants are able to take reasonable measures to make plaintiff safer but are refusing to do so.

Thus, plaintiff had it right in his original complaint by naming higher ranking officials who have the authority to change his conditions of confinement. Because there is no indication in plaintiff's proposed amended complaint that the proposed new defendants are currently subjecting him to a substantial risk of serious harm or that they could take measures that would make plaintiff safer, I must deny plaintiff's motion for leave to amend his complaint. Bethany Pharmacal Co. v. QVC, Inc., 241 F.3d 854, 861 (7th Cir. 2001) (motion for leave to file an amended complaint may be denied if amendment would be

futile).

ORDER

IT IS ORDERED that plaintiff Stephen Wendell Jones's motion for leave to file an amended complaint is DENIED.

Entered this 17th day of September, 2007.

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