

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

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

JUDY SMITH; KENNETH KELLER;
ANGIE WOOD; LT. KUSTER;
LT. KIRBY LINJER; CO. II CAROL COOK;
PETER ERICKSON; CAPT. BRANT;
WILLIAM POLLARD; DR. STEVEN SCHMIDT;
LT. LAMBRECHT; CAPT. BRUCE MURASKI;
PHIL KINGSTON; DON STRAHOTA;
CAPT. O'DONOVAN; SGT. VOSS;
SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA;

Defendants.

ORDER

07-C-318-C

In an order dated July 31, 2007, I screened plaintiff's complaint and allowed him to proceed on 16 claims against 19 defendants. I dismissed the complaint as to various other claims and defendants for plaintiff's failure to state a claim upon which relief may be granted.

Now plaintiff has filed what I construe as a motion for clarification, in which he points out correctly that I did not determine whether he could proceed on any claims against

defendant Judy Smith, who was the warden of Oshkosh Correctional Institution when plaintiff was incarcerated there. I will deny plaintiff leave to proceed against Smith and I will dismiss the complaint as to her.

In his complaint, plaintiff alleges that he complained to Smith about other defendants' constitutional violations and she failed to take corrective action. As I explained in the screening order with respect to plaintiff's claims against other defendants, a refusal to take action on a complaint of a constitutional violation after it has been committed is not sufficient to trigger liability under 42 U.S.C. § 1983. Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002); Vasquez v. Raemisch, 480 F. Supp. 2d 1120, 1133-34 (W.D. Wis. 2007). If a prisoner complains to an official about an ongoing risk to the prisoner's health or safety and the official refuses to take steps to prevent further harm, that could constitute an independent violation of the Eighth Amendment. Strong, 297 F.3d at 650. But there are no allegations in plaintiff's complaint from which I could infer reasonably that defendant Smith was aware of a risk to plaintiff's health or safety.

Plaintiff raises one other question in his motion: he asks how long defendants have to file an answer to his complaint. With respect to any defendants who accept service pursuant to the informal service agreement this court has with the attorney general's office, those defendants have 40 days from the date of the court's mailing of the complaint to the attorney general's office in which to file an answer. If any defendants do not accept service

in this manner, plaintiff will have to accomplish service on his own in accordance with Fed. R. Civ. P. 4. In that case, the deadline for filing an answer is 20 days after personal service of the summons and complaint, Fed. R. Civ. p. 12(a)(1)(A), or, if the defendant waives personal service under Fed. R. Civ. P. 4(d), 60 days after “the date on which the request for waiver of service was sent,” Fed. R. Civ. P. 4(d)(3).

ORDER

IT IS ORDERED that plaintiff Shaheed Madyun’s motion for clarification is GRANTED. Plaintiff’s complaint is DISMISSED as to defendant Judy Smith for plaintiff’s failure to state a claim upon which relief may be granted.

Entered this 8th day of August, 2007.

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