IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

ORDER

Plaintiff,

09-cv-170-bbc

v.

RICK RAEMISCH, PETER HUIBREGTSE,
GARY BOUGHTON, ELLEN RAY,
TOM GOZINSKI, WELCOME ROSE,
AMY SMITH, HELLEN KENNEBECK,
KATHRYN ANDERSON, LARRY PRIMMER,
JANA JUERGENS, MONICA HORNER,
TRISHA LANSING, NANCY SALMON,
C. BEERKIRCHER, THOMAS TAYLOR,
DAVID GARDNER, LT. BOISEN, BRIAN KOOL,
TIM HAINES, CRAIG TOM, LT. HANFIELD,
JOSH BROWN, H. BROWN, W. BROWN,
SGT. FURER, CO NEIS, SGT. CARPENTER,
SGT. BOARDMAN, SGT. BLOYER,
COII JONES, COII JOHNSON, CO HULCE,
COII KARNOPP, R. STARKEY,
SGT. WALLACE, COII ECKT, COII EWING,
D. ESSER, M. SCULLION, JEROMEY CAYA,
JENNIFER SICKINGER, JOAN WATERMAN,
WENDY THOMPSON, SGT. TREFT,
SGT. COOK and JOHN DOES,

Defendants.

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In a May 3, 2012 order, I dismissed this case for plaintiff Titus Henderson's failure to provide a complaint containing allegations complying with Fed. R. Civ. P. 8 and 20. Each of his three lengthy proposed complaints contained numerous claims seemingly unrelated to each

other; plaintiff tried to tie all of his claims together by alleging an overarching conspiracy to target African American inmates that was far too vague to satisfy Rule 8.

Now plaintiff has filed a document styled as a motion for reconsideration of that dismissal as well as a notice of appeal. However, plaintiff does not provide any argument for why I erred in the May 3 order. Rather, it appears that he has received only the judgment and not the May 3 decision setting forth the reasons for the dismissal. Plaintiff hypothesizes that there was miscommunication between Magistrate Judge Stephen Crocker and the district court because he received two separate orders directing him to file an amended complaint, and then asks the court to consider his amended complaint filed on January 24, 2012. I can assure plaintiff that there was no miscommunication between Magistrate Judge Crocker and me. Magistrate Judge Crocker's January 30, 2012 order, dkt. #32, granted plaintiff an extension of the time to file an amended complaint. This deadline was originally set forth in my January 10, 2012 order, dkt. #30.

As for plaintiff's request for the court to consider his amended complaint dated January 24, 2012, no such document appears on the court's docket. The court did receive an amended complaint dated February 13, 2012, which I reviewed before dismissing the case. Even if plaintiff's earlier amended complaint was lost in the mail, there is no need to reconsider my May 3 order because plaintiff was given three attempts to submit a complaint that properly stated claims that could be litigated in one action. Accordingly, his motion for reconsideration will be denied. Because plaintiff seems to assert that he never received a copy of the May 3 order, I will attach it to this order.

Turning to plaintiff's appeal and request to proceed in forma pauperis on that appeal, a district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence; the appeal is taken in bad faith; or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. There is no substantial ground for a difference of opinion on the question whether the case should have been dismissed for plaintiff's repeated failure to satisfy Rules 8 and 20.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the $455 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. Plaintiff must include with his motion an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the full $455 filing fee before it considers his appeal further. If he does not pay the fees within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that

1. Plaintiff Titus Henderson's motion for reconsideration of the court's May 3, 2012 order dismissing this case, dkt. #37, is DENIED.

2. Plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #40, is DENIED. I certify that plaintiff's appeal is not taken in good faith. The clerk of court is directed to insure that plaintiff's obligation to pay the $455 fee for filing his appeal is reflected in the court's financial records.

Entered this 16th day of July, 2012.

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

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- -

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OPINION and ORDER

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SGT. COOK and JOHN DOES,

Defendants.

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BACKGROUND

This case was closed on April 29, 2009, when plaintiff Titus Henderson failed to pay the $350 filing fee after I found him ineligible for in forma pauperis status because he had "struck out" under 28 U.S.C. § 1915(g), and none of his claims satisfied the imminent danger exception to § 1915(g). Plaintiff appealed the decision and, on February 16, 2011, the Court of Appeals for the Seventh Circuit concluded that none of plaintiff's previous strikes were valid because plaintiff had presented at least one non-frivolous claim in each of them. Henderson v. Huibregtse, no. 08-3650, slip op. at 2 (7th Cir. Jan. 25, 2011) (citing Turley v. Gaetz, 625 F.3d 1005, 1012 (7th Cir. 2010) ("[A] strike is incurred under § 1915(g) when an inmate's case is dismissed in its entirety based on the grounds listed in § 1915(g)," rather than when only one claim out of several is dismissed under § 1915(g).)) The court of appeals remanded the case to this court to determine whether plaintiff may proceed in forma pauperis with this case.

The case was reopened. In a June 20, 2011 order in this case, dkt. #16, I noted that plaintiff's complaint and supplement to the complaint were extremely long and appeared to combine numerous unrelated claims against dozens of defendants. I suggested that plaintiff submit an amended complaint or complaints organizing his allegations into more manageable chunks containing related claims against a smaller number of prison officials. Plaintiff responded by submitting an amended complaint, dkt. #23, containing 129 numbered allegations against more than 60 named defendants. In a December 12, 2011 order, dkt. #28, I summarized the allegations as follows:

- Twice in early 2004, prison staff contaminated plaintiff's food.
- In March 2004, prison staff placed an "invalid restriction" on plaintiff that caused him to be denied 12 meals over 6 days.

- In 2006, plaintiff was threatened with physical harm by prison officials. When plaintiff informed high-level officials of the threats, they failed to intervene.

- On November 1, 2006, prison staff contaminated plaintiff's food. To cover up this act, defendants Ellen Ray, C. Beerkircher and Kelly Trumm falsified grievance documents.

- In February 2007, plaintiff was given a false conduct report that resulted in his being denied 30 meals over the course of 15 days.

- In May 2007, plaintiff was wrongly placed on a "back-of-cell restriction" forcing him to sit naked in the back of his cell when his meals were delivered. Plaintiff refused to do this and was then denied numerous meals. After plaintiff filed a grievance, he was taken to a freezing, dirty cell with no clothes or bedding and was denied medical care for the symptoms caused by the lack of nutrition.

- In August 2007, defendants J. Sickinger and J. Caya put a rock in plaintiff's food and then denied him medical care after he broke his tooth on the rock.

- In May and June 2008, prison staff denied plaintiff numerous meals.

- From August through October 2009, prison staff twice forged conduct reports against plaintiff and then denied him numerous meals as punishment.

- Twice in 2010, prison staff contaminated plaintiff's food.

- In January and February 2011, prison officials "forged prison files to deny [plaintiff] 34 meals within 15 days, as punishment."

- Union officials intervened in the investigation of prison staff involved in these claims to prevent them from being fired. These officials encourage the practice of hiring only white prison guards.

- Every time plaintiff is denied food for a 7-10 day interval, he loses about 30 pounds and suffers acute headaches, blurred vision and heart palpitations.

I dismissed the amended complaint for failure to comply with Federal Rules of Civil Procedure 8 and 20, stating that "[t]he various incidents described in plaintiff's complaint are alleged to have taken place months if not years apart and involve different sets of defendants with only

little overlap." Dkt. #28. Also, I noted that plaintiff attempted to tie all of the allegations together under the umbrella of an overarching conspiracy against African American inmates in general and plaintiff in particular, but concluded that these allegations violated Rule 8. I gave plaintiff a chance to submit a new amended complaint more fully setting forth his conspiracy allegations.

Plaintiff responded by filing a motion for my recusal and a motion for reconsideration, both of which I denied in a January 10, 2012 order. Dkt. #30. In particular, plaintiff argued that he could not provide any further detail about the conspiracy allegations in his complaint because he was concerned about violating a secrecy order issued in a 2007 Wisconsin "John Doe" criminal proceeding. I concluded that plaintiff "should not have to reveal John Doe proceeding testimony in order to answer the [Rule 8] questions raised in the December 12 order." Id. I outlined the Rule 8 problems with plaintiff's conspiracy allegations as follows in the December 12 order:

> The closest plaintiff comes to properly alleging a conspiracy is his allegation that Department of Corrections officials and prison staff worked together to promulgate and enforce prison regulation WSPF 536.03, which served to target black prisoners, resulting in their being denied basic necessities such as food. However, because plaintiff does not provide more specific allegations, his claims of conspiracy are unclear and violate Federal Rule of Civil Procedure 8, which requires in part "a short and plain statement of the claim showing that the pleader is entitled to relief." Is plaintiff saying that there is a prison rule explicitly targeting black prisoners? Is he saying that this is the regulation describing the "back of the cell" restriction that plaintiff has repeatedly defied, with the result that he was denied many meals? Or is he saying something else? Without more information from plaintiff, I cannot conclude that his allegations of conspiracy adequately tie all of his individual claims together.

I gave plaintiff an extension of time to file a new amended complaint, but warned him that it

would be his final chance to file a complaint that satisfies Rules 8 and 20. Now plaintiff has submitted a new proposed amended complaint, dkt. #34, as well as a motion "for contempt and sanctions" against several defendants.

MOTION "FOR CONTEMPT AND SANCTIONS"

In his motion "for contempt and sanctions," plaintiff's main complaint seems to be that several defendants are refusing to mail his amended complaint to the court. This argument is moot because the court has received this pleading. Plaintiff argues also that the court should appoint him counsel to assist him in preparing his amended complaint, citing Donald v. Cook County Sheriff's Department, 95 F.3d 548 (7th Cir. 1996), but that case suggests only that appointment of counsel for purposes of amending the complaint is a tool that courts can use in the right circumstances. Id. at 556. There is no reason to appoint counsel in the present case; plaintiff has been given the opportunity to whittle his complaint into more easily manageable portions but instead he has chosen to proceed on a blunderbuss complaint against scores of defendants.

Finally, in his motion for sanctions plaintiff seems to be seeking reconsideration of the January 10, 2012 denial of his motion for my recusal. In his original motion for my recusal, plaintiff stated that I conducted ex parte communications with several defendants in which I told them that plaintiff had threatened to kill me. In the January 10 order denying the motion for my recusal, I stated as follows:

> I have not had conversations with any of the defendants in this action . . . . I have not said anything to anyone about death threats because I have not had any

> such threats. Plaintiff does not explain whether he actually made these threats, or when or how he did so, which leads me to believe that he has fabricated the issue in an attempt to obtain a new judge. I conclude that there is no reason to recuse myself in this case.

Dkt. #30. Now plaintiff states that he was denied parole in January in part because the U.S. Marshal believes that he "poses a serious threat to U.S. Judge." Plaintiff does not support the unsworn averments in his motion with evidentiary materials, but even assuming what plaintiff says is true, he fails to explain when or how he made these threats. Plaintiff's vague assertions provide no reason to treat his continued attempts to raise the issue as anything other than an effort to influence the proceedings by forcing me into recusal. Because I have no reason to believe plaintiff's purported threats are genuine, I will not grant his motion for reconsideration.

SECOND AMENDED COMPLAINT

Turning to plaintiff's second amended complaint, plaintiff pares down his allegations, but only slightly; he now has 107 numbered allegations against more than 70 defendants. He continues to focus his allegations on claims that prison staff withheld meals or otherwise tampered with his food since at least 2004, although he includes other claims as well, such as that prison officials banged loudly on his cell door to interrupt his sleep, made racial threats and put him in an extremely cold cell. These allegations suffer from the same problems that plagued his previous complaint—months, if not years, separate some of the incidents, and there is little overlap between sets of defendants. Plaintiff again tries to tie all of his claims together by alleging an overarching conspiracy to target African American inmates and inmates from southeastern Wisconsin cities in particular. Plaintiff now names several more prison

regulations, but he again fails to provide any explanation of what these regulations say or why they disproportionally target African Americans from southeastern Wisconsin. Without a plausible conspiracy claim, he cannot tie all of his separate individual claims into one lawsuit in this court. "A suit stuffed with allegations that the plaintiff has been subjected to a variety of constitutional violations without some hint of a basis for plaintiff's belief that a genuine conspiracy exists will not suffice to satisfy the requirements of Rule 20." Wine v. Thurmer, 2008 WL 1777264, *6 (W.D. Wis. Apr. 16, 2008). As I warned plaintiff, this was his final chance to file a complaint that satisfies Rules 8 and 20. Because he has failed to file such a complaint, the case will be dismissed with prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Titus Henderson's motion "for contempt and sanctions," dkt. #33, is DENIED.

2. Plaintiff's motion for reconsideration of the court's January 10, 2012 order denying his motion for my recusal, dkt. #33, is DENIED.

3. The case is DISMISSED with prejudice for plaintiff's failure to provide allegations complying with Fed. R. Civ. P. 8 and 20. The clerk of court is directed to close this case.

Entered this 3d day of May, 2012.

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