

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

DWAYNE ALMOND,

Plaintiff,

v.

WILLIAM POLLARD and MARTHA ROLLI,

Defendants.

ORDER

10-cv-621-bbc

In this case, plaintiff Dwayne Almond brought claims that defendants William Pollard and Martha Rolli violated his Eighth Amendment rights against cruel and unusual punishment by denying him medication for treatment of schizophrenia. In an October 24, 2011 order, I granted the motion for summary judgment filed by defendants, denied plaintiff's motion for summary judgment and directed the clerk of court to enter judgment in favor of defendants.

Now plaintiff has filed a document I construe as a motion for relief from the judgment under Federal Rule of Civil Procedure 60(b)(2). Plaintiff presents medical records he claims were only recently given to him by a prison employee. I understand him to be arguing that these records constitute new evidence that he "could not have . . . discovered in time to move for a new trial under Rule 59." Fed. R. Civ. P. 60(b)(2). Even if I assume this dubious proposition is true (plaintiff has submitted more than one hundred pages of medical documents in litigating this case, and does not explain why he did not have access

to these particular medical records), the new documents give me no reason to reconsider the October 24 ruling. At most, these documents show that plaintiff had been diagnosed in the past with schizophrenia. However, I have already concluded that plaintiff's past diagnoses do not by themselves support deliberate indifference claims against defendants:

Unfortunately for plaintiff, he continues to rely almost exclusively on [his] past diagnoses without explaining why defendant Rolli acted with deliberate indifference. But it is not enough for plaintiff to show that he was once diagnosed with schizophrenia; McQueeney and defendant Rolli disagreed with previous diagnoses of schizophrenia, but this disagreement does not sustain a deliberate indifference claim. Gutierrez v. Peters, 111 F.3d at 1374 (7th Cir. 1997). Instead, the record shows that Rolli saw serious problems with prescribing Lorazepam, in particular plaintiff's previous substance abuse history, and concluded that the medication was a not a good option for plaintiff. Plaintiff does not produce any evidence, such as expert testimony, suggesting that Rolli's decision to deny the request for Lorazepam was a "substantial departure from accepted professional judgment," which is necessary to show that Rolli was deliberately indifferent. Estate of Cole, 94 F.3d at 261-62.

Dkt. #71. Because this new evidence fails to add any support for plaintiff's case, I must deny his Rule 60 motion.

ORDER

IT IS ORDERED that plaintiff Dwayne Almond's motion for relief from judgment, dkt. #73, is DENIED.

Entered this 25th day of January, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge