

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

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JAMES J. KAUFMAN,

Plaintiff,

v.

JEFFREY PUGH, SANDRA COOPER,  
TERRY SHUK, ISMAEL OZANNE  
and OFFICER O'CONNELL,

Defendants.  
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ORDER

11-cv-421-bbc

In this lawsuit, plaintiff James Kaufman is proceeding on First Amendment claims against defendants Officer O'Connell, Terry Shuk, Sandra Cooper, Jeffrey Pugh and Ismael Ozanne for denying plaintiff possession of greeting cards and books of postcards on the ground that they were pornographic. On January 25, 2012, I issued an order denying plaintiff's motion to file a supplement to his complaint because the claims in that supplement (that Pugh and three proposed new defendants, Charles Cole, Dan Westfield and Sheila Patten, denied plaintiff possession of two other books) had not been administratively exhausted at the time that plaintiff filed his original complaint in this action.

Now plaintiff has filed a motion for reconsideration of that decision, arguing that he

was not required to exhaust his supplemental claims before filing his original complaint. Rather, he argues that he only needed to exhaust the new claims before filing his supplement. After further examination of the relevant case law, I conclude that plaintiff is correct. Although 42 U.S.C. § 1997e states that “[n]o action shall be brought with respect to prison conditions under section 1983 . . . until such administrative remedies as are available are exhausted,” the Court of Appeals for the Seventh Circuit has explained that a prisoner may amend his complaint to include new claims that were not exhausted at the time he filed his original complaint, so long as they have been exhausted by the time he files his proposed amended complaint:

The sole objective of § 1997e(a) is to permit the prison's administrative process to run its course before litigation begins. [Plaintiff's] November 1998 grievance apprised prison officials of the alleged attack at Menard, and he did not hale those defendants into court until he had pursued all of the administrative remedies available to him. That he raised these claims by amending his complaint in an already pending case rather than initiating an entirely new proceeding is irrelevant to the objectives of § 1997e(a).

Cannon v. Washington, 418 F.3d 714, 719 (7th Cir. 2005) (citations omitted).

However, this does not end the inquiry. In their brief opposing plaintiff's original motion for leave to file his supplemental claims, defendants argue that plaintiff's new claims cannot be added to his current claims without violating Fed. R. Civ. P. 18 and 20. Because each set of claims brought by plaintiff refers to a different set of “core defendants” (only defendant Pugh is a defendant for both sets of claims), plaintiff cannot join his claims in one lawsuit under Rule 20 unless they arise out of the same transaction or occurrence or series

of transactions or occurrences and present questions of law or fact common to all. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

The central purpose of Rule 20 is to enable economies in litigation, such as trial convenience and timely resolution of disputes. Elmore v. Henderson, 227 F.3d 1009, 1012 (7th Cir. 2000). “At root, ‘[t]he impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.’” First Time Videos, LLC v. Does 1-500, 276 F.R.D. 241, 252 (N.D. Ill. 2011) (quoting United Mine Workers of America v. Gibbs, 383 U.S. 715, 724 (1966)). Factors to consider include whether the alleged conduct occurred during the same general time period, involved the same people and similar conduct and implicated a “system of decision-making.” Hawkins v. Groot Industries, Inc., 210 F.R.D. 226, 230 (N.D. Ill. 2002).

Applying these standards, I conclude that the two sets of claims brought by plaintiff may be joined under Rule 20. Even though the separate set of incidents took place over a year apart, both sets of claims concern the denial of print materials based on the application of Stanley prison rules against pornography. Accordingly, there will be similar questions of fact and law applied to both sets of claims. Given the similarities between plaintiff’s new claims and those on which he is already proceeding, I need not conduct a lengthy formal screening of his new claims. I will allow plaintiff to supplement his original complaint with his new claims and grant him leave to proceed on those claims.

Also, plaintiff has filed a document titled “Motion for Order of Substitution Pursuant

to F.R.C.P. Rule 25(d),” dkt. #25, in which he seeks to have defendant Ozanne replaced in his official capacity as Department of Corrections deputy secretary by his successor in that position, defendant Charles Cole. However, at this point it seems that plaintiff’s claim against Ozanne is an individual capacity claim, and as defendants point out, it should not be necessary to add the deputy secretary in his official capacity in order to provide equitable relief going forward. Accordingly, I will deny this motion without prejudice, but will add Cole in his official capacity if it later becomes apparent that it is necessary to do so.

#### ORDER

IT IS ORDERED that

1. Plaintiff James Kaufman’s motion for reconsideration of the court’s January 25, 2012 order denying him leave to supplement his complaint, dkt. #24, is GRANTED; plaintiff will be allowed to supplement his original complaint with new claims as stated in dkt. #13.

2. Plaintiff is GRANTED leave to proceed on the following claims:

a. Defendants Officer O’Connell, Terry Shuk, Sandra Cooper, Jeffrey Pugh and Ismael Ozanne violated plaintiff’s First Amendment rights by denying him possession of greeting cards and books of postcards on the ground that they were pornographic.

b. Defendants Pugh, Charles Cole, Dan Westfield and Sheila Patten violated plaintiff’s First Amendment rights by denying him possession of books titled “Texas Twins:

The Story of Morgan & Nash” and “The Queer Movie Poster Book” on the ground that they were pornographic.

3. Plaintiff’s motion to substitute defendant Cole in his official capacity for defendant Ozanne, dkt. #25, is DENIED without prejudice.

4. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of the supplement to plaintiff’s complaint and this order are being sent today to the Attorney General for service on the state defendants. Pursuant to Rule 15(a)(3), the Attorney General’s Office will have 14 days from the service of this order to answer the amended complaint if it accepts service on behalf of the new state defendants.

Entered this 18th day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge