

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

PARISH GOLDEN,

Plaintiff,

ORDER

v.

11-cv-616-bbc

CO II RAUSCH, CO II FRISCH,
CO II BIEMERET and CO II DEBROUX,

Defendants.

Pro se plaintiff Parish Golden has filed a motion for a reconsideration of the order dated October 20, 2011, in which I screened his complaint under 28 U.S.C. §§ 1915 and 1915A. In addition, he has filed a proposed amended complaint.

In the October 20 order, dkt. #8, I allowed plaintiff to proceed on claims that defendants CO II Raush, CO II Frisch, CO II Bieremet and CO II DeBroux used excessive force against him, in violation of the Eighth Amendment. However, I dismissed his claim alleging excessive force by defendants William Pollard, Michael Baenen, Peter Ericksen and John Does 1-10 because he did not allege facts showing that any of them were personally involved in the alleged violation. In particular, plaintiff did not allege that any of these

defendants were present during the use of force or knew that it was likely to occur. In addition, I dismissed a claim that “defendants” had interfered with his ability to mail grievances, in violation of the First Amendment, because he did not identify the actions of any particular defendant who violated this right. Finally, I denied his motion for appointment of counsel because he failed to show that the legal and factual complexity of the case exceeded his ability to prosecute it.

Plaintiff seeks reconsideration of each issue that I did not decide in his favor in the October 20 order. Because plaintiff has not shown that I erred with respect to any of these issues, I am denying his motion for reconsideration.

Anticipating this ruling, plaintiff adds new allegations about the dismissed claims in his proposed amended complaint in an attempt to save them. With respect to the defendants dismissed on the excessive force claim, his allegations are still insufficient. He says that he wrote to Pollard and Ericksen months before the assault complaining that “staff were trying to harm him.” However, he does not say that he identified *who* was trying to harm him or gave Pollard or Ericksen any specific information that would suggest he was at a risk of serious harm. Without allegations like that, he cannot state a claim upon which relief may be granted. Dale v. Poston, 548 F.3d 563, 569 (7th Cir. 2008); Butera v. Cottey, 285 F.3d 601, 606 (7th Cir. 2002).

With respect to his mail interference claim, plaintiff specifically identifies defendants

Frisch and Rausch as those who were responsible for stopping the delivery of his mail, so I will allow him to proceed on that claim against Frisch and Rausch. If plaintiff learns during discovery that other officers were involved, he may amend his complaint at that time.

At summary judgment or trial, plaintiff will have to prove that Frisch and Rausch interfered with his mail intentionally, Sizemore v. Williford, 829 F.2d 608, 609 (7th Cir.1987), and that any interference was not reasonably related to a legitimate penological interest. Thornburgh v. Abbott, 490 U.S. 401, 413 (1989).

ORDER

IT IS ORDERED that

1. Plaintiff Parish Golden's motion for reconsideration, dkt. #16, is DENIED.
2. Plaintiff's motion for leave to amend his complaint is GRANTED and his proposed amended complaint, dkt. #18, is ACCEPTED as the operative pleading.
3. Plaintiff may proceed on the following claims:
 - (a) defendants CO II Raush, CO II Frisch, CO II Bieremet and CO II DeBroux used excessive force against him, in violation of the Eighth Amendment.
 - (b) defendants Rausch and Frisch prevented plaintiff from mailing grievances, in violation of the First Amendment.

4. Plaintiff's amended complaint is DISMISSED with respect to all other claims.

Entered this 21st day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge