

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

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DONALD CHARLES WILSON,  
  
Plaintiff,  
  
v.

ORDER  
  
11-cv-725-bbc

GARY HAMBLIN, KAREN E. TIMBERLAKE,  
THOMAS H. BOWD, DAVID H. SCHWARZ,  
MINDY SONNENTAG, ALFONSO J. GRAHAM,  
DR. HUGH JOHNSON, DR. ASHLEY THOMPSON,  
DR. THOMAS J. MICHLOWSKI, DR. LORI ADAMS,  
DR. JASON KOCINA, DR. ALEXANDER STOLARSKI,  
DR. SEAN CARTER, DR. KEVIN MCSORLEY and  
DR. CARLO GAANAN,  
  
Defendants.

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In this proposed civil action under 42 U.S.C. § 1983, plaintiff Donald Wilson, an inmate at the Wisconsin Resource Center located in Winnebago, Wisconsin, contends that several doctors and administrators at the Wisconsin Department of Corrections have violated his constitutional rights. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform

Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

Having reviewed the complaint, I conclude that plaintiff may not proceed at this time because his complaint has several problems. Additionally, because it is not clear whether plaintiff will be proceeding on any claims, I will deny his motion for appointment of counsel, dkt. #4. Plaintiff may renew the motion if he is eventually granted leave to proceed on any of the claims in this case.

As an initial matter, plaintiff's complaint does not comply with Fed. R. Civ. P. 20 because he has asserted multiple claims that cannot be joined in one lawsuit. Under Rule 20(a)(2), a plaintiff is prohibited from asserting unrelated claims against different defendants or sets of defendants in the same lawsuit. The rule prohibits a plaintiff from joining many defendants in a single action unless the plaintiff asserts at least one claim to relief against each defendant that both arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). In other words, the plaintiff may assert claims against more than one defendant if he asserts that all of the defendants were involved in the

same alleged wrongdoing.

In this case, plaintiff asserts separate claims against different “core groups” of defendants for different incidents. Plaintiff’s claims can be divided into the following four lawsuits:

1. In October 2009, defendants Thomas Bowd, David Schwarz and Mindy Sonnentag revoked plaintiff’s parole based on false evidence and without providing him with due process or a competency hearing even though they knew he suffered from a mental illness.
2. Since 2009 when plaintiff was taken into custody by the Wisconsin Department of Corrections, defendants Lori Adams, Ashley Thompson, Jason Kocina, Alexander Stolarski, Kevin McSorley and Thomas Michlowski, who are doctors employed by the Department, have failed to provide plaintiff adequate medical care for his Alzheimer’s disease.
3. In March 2010, defendant Alfonso Graham violated plaintiff’s due process rights during a parole hearing at which Graham denied plaintiff’s request for parole.
4. In August 2011, defendant Dr. Carlon Gaanan failed to provide plaintiff treatment for dizziness, shortness of breath and other symptoms related to a thyroid problem.

These separate lawsuits involve claims that do not arise out of the same series of transactions or occurrences and do not include the same defendants or subset of defendants as the other claim. Thus, the claims cannot proceed in a single lawsuit. (I note that there are several defendants identified in the caption of plaintiff’s complaint that are not named in any of the four lawsuits identified above. In particular, plaintiff’s complaint included no

allegations against defendants Gary Hamblin, Karen Timberlake, Hugh Johnson or Sean Carter. I will dismiss these defendants from the case.)

Plaintiff's claims have additional problems. Plaintiff's first claim challenges the revocation of his parole, a claim that cannot be raised in an action under 42 U.S.C. § 1983 unless plaintiff first prevails in a habeas corpus proceeding challenging the revocation proceedings. Heck v. Humphrey, 512 U.S. 477, 487 (1994); Spencer v. Kemna, 523 U.S. 1, 17 (1998) (application of Heck to parole revocation hearing); Williams v. Wisconsin, 336 F.3d 576, 579 -580 (7th Cir. 2003) (citing Drollinger v. Milligan, 552 F.2d 1220 (7th Cir. 1977)). Because plaintiff has not established the invalidity of his probation revocation by showing that he prevailed in a habeas corpus proceeding challenging the revocation proceedings, he cannot seek relief under § 1983. Therefore, I will dismiss that claim.

With respect to plaintiff's remaining claims, it appears from his complaint that they should be dismissed for plaintiff's failure to complete the grievance process for those claims before filing suit. Plaintiff alleges that he has filed a grievance related to the facts in his complaint and that a "decision is pending." He also states that he intends to file an appeal if his grievance is denied. However, the Court of Appeals for the Seventh Circuit has held that prisoners must finish the exhaustion process *before* they file their lawsuit. Ford v. Johnson, 362 F.3d 395, 398 (7th Cir. 2004). Although a prisoner's failure to exhaust his administrative remedies is an affirmative defense that normally must be proven by the

defendants, a district court may raise an affirmative defense on its own if it is clear from the face of the complaint that the defense applies. Gleash v. Yuswak, 308 F.3d 758, 760-61 (7th Cir. 2002). It is clear that plaintiff has failed to exhaust his administrative remedies with respect to at least some of his claims. However, because plaintiff's complaint contains multiple unrelated claims, I cannot determine which claims plaintiff has failed to exhaust. Thus, I will give plaintiff an opportunity to identify which lawsuits he wishes to pursue and show cause why those lawsuits should not be dismissed for failure to exhaust his administrative remedies.

Plaintiff should submit a response identifying which numbered lawsuit (#2, #3 or #4) he wishes to pursue. If he chooses to pursue more than one lawsuit, he should explain which one he wants to pursue under this case number. The remaining lawsuits will be assigned separate case numbers. For any lawsuit that plaintiff decides to pursue, he should explain whether he has exhausted the claims in the lawsuit. If plaintiff decides to pursue more than one lawsuit, he should know that he will be required to pay an initial partial filing fee for each lawsuit and will be obligated to pay the \$350 filing fee for those additional lawsuits at some point. If plaintiff decides to dismiss any of his claims voluntarily at this stage in order to complete the grievance process, his claims would be dismissed without prejudice, allowing plaintiff to bring them at another time. He would be obligated to pay only the \$350 filing fee for this case.

Plaintiff should be aware that because it is not clear at this time which of his separate lawsuits he will pursue, I have not undertaken a full screening of the merits of the claims raised in the lawsuits identified above. Once plaintiff identifies the suit or suits he wants to continue to litigate, if any, I will screen the individual actions that remain as required under 28 U.S.C. § 1915A.

## ORDER

IT IS ORDERED that

1. Plaintiff Donald Charles Wilson is DENIED leave to proceed on his claim that defendants Thomas Bowd, David Schwarz and Mindy Sonnentag violated his right to due process when they revoked his parole. This claim is DISMISSED without prejudice to plaintiff's raising it in a petition for a writ of habeas corpus.

2. Defendants Thomas Bowd, David Schwarz, Mindy Sonnentag, Gary Hamblin, Karen Timberlake, Hugh Johnson and Sean Carter are DISMISSED from this case.

3. Plaintiff's motion for appointment of counsel, dkt. #4, is DENIED without prejudice.

4. Plaintiff may have until December 16, 2011 to in which to identify for the court the separately numbered lawsuit, if any, identified in the body of this opinion on which he wishes to proceed under the number assigned to this case. Plaintiff must also explain why

the lawsuit he chooses to pursue should not be dismissed for failure to exhaust his administrative remedies.

5. Plaintiff may have until December 16, 2011, in which to advise the court whether he will prosecute the remaining lawsuits or whether he wishes to withdraw them voluntarily. If plaintiff wishes to pursue any of the remaining lawsuits, he must explain why those lawsuits should not be dismissed for failure to exhaust his administrative remedies.

6. If, by December 16, 2011, plaintiff fails to respond to this order, I will enter an order dismissing the lawsuit as it presently exists for plaintiff's failure to prosecute.

Entered this 2d day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge