IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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PRINCE ATUM-RA UHURU MUTAWAKKIL
also known as NORMAN C. GREEN,

OPINION and ORDER

Plaintiff,

12-cv-816-bbc

v.

CAPTAIN GERI, SGT. PATTEN, M. TAYLOR,
JOHNSON, McDANIELS, LT. BOISEN,
SGT. KUSSMAUL, PETER HUIBREGTSE,
BRIAN KOOL, A. DUNBAR, ELLEN RAY,
CAPTAIN GILBERG, BURTON COX,
CYNTHIA THORPE, CHRISTINA BEERKIRCHER,
KELLY TRUMM, JANE DOE #1
and JANE/JOHN DOE #2,

Defendants.

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Pro se plaintiff Prince Atum-Ra Uhuru Mutawakkil, also known as Norman Green, has filed a response to this court's order dated February 25, 2013, dkt. #10, in which I concluded that plaintiff's complaint violated Fed. R. Civ. P. 20 because it included more than 30 claims that belonged in at least 10 separate lawsuits. I directed plaintiff to choose one of the 10 lawsuits to proceed under case no. 12-cv-816-bbc. If plaintiff wished to pursue the remaining nine lawsuits, he could do so, but he would have to pay a separate filing fee. Otherwise, he could dismiss the other lawsuits without prejudice to refiling them at a later date.

In his response plaintiff seeks reconsideration of the conclusion that his complaint violates Rule 20, but he has not shown that all of his claims should be joined in one lawsuit. Further, even if I agreed with plaintiff that he had complied with Rule 20, it would be unwieldy to allow him to maintain so many claims against so many different defendants in a single case. Lee v. Cook County, Illinois, 635 F.3d 969, 971 (7th Cir. 2011) (court may sever claims under Fed. R. Civ. P. 21 when differences between the claims predominate over common questions); In re High Fructose Corn Syrup Antitrust Litigation, 361 F.3d 439, 441 (7th Cir. 2004) (court has inherent authority to sever claims in interest of justice even when standard under Rule 21 is not satisfied). See also Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680, 683 (7th Cir. 2012) ("A litigant cannot throw all of his grievances, against dozens of different parties, into one stewpot."); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011) ("[U]nrelated claims against different defendants belong in separate lawsuits . . . to prevent the sort of morass produced by multi-claim, multi-defendants suits like this one.") (internal quotations omitted).

In the event the court denies his motion for reconsideration, plaintiff chooses to proceed with what the court has identified as Lawsuit #7. (Plaintiff also asks what his "appellate review rights" are. After judgment is entered in this case, plaintiff is free to appeal this order or any other adverse ruling to the Court of Appeals for the Seventh Circuit.) Because plaintiff has not asked the court to proceed with any other claims in a separate case, I will dismiss the complaint as to those claims without prejudice to plaintiff's refiling them at a later time.

Lawsuit #7 consists of the following claims:

- defendants Geri, Taylor, McDaniels and Johnson used excessive force against plaintiff and subjected him to a strip search; defendants Huibregtse, Ray, Kussmaul, Kool and Cox approved these actions;

- defendant Geri refused to allow plaintiff to see the nurse after the use of force;

- defendant Geri gave plaintiff a false conduct report related to the excessive force;

- defendants Boisen and Huibregtse refused to allow plaintiff to call many of his witnesses at the disciplinary hearing;

- defendant Boisen found plaintiff guilty and disciplined him by giving him 270 days in segregation;

- defendants Ray and Huibregtse denied a grievance that plaintiff still had pain in his hand as a result of the excessive use of force;

- defendants Trumm and Huibregtse refused to turn over documents related to an excessive use of force;

- defendants Geri dispensed aspirin to plaintiff in an unsanitary fashion; defendants Ray and Huibregtse denied plaintiff's grievance on this issue;

- defendant Ray denied plaintiff's grievance regarding the lack of procedural safeguards for strip searches.

For the reasons discussed below, I am allowing plaintiff to proceed on some of these claims and dismissing others for plaintiff's failure to state a claim upon which relief may be granted.

OPINION

A. Use of Force

Plaintiff's claim for excessive force is against defendants Geri, Taylor, McDaniels,

Johnson, Huibregtse, Ray, Kussmaul, Kool and Cox. He alleges that, on November 26, 2007, defendants Geri, Taylor, McDaniels and Johnson came to his cell under the pretense of searching his cell, but that their true purpose was to abuse him. Defendants handcuffed plaintiff behind his back and tethered him to the door. When plaintiff refused to kneel because of a medical condition in his knees, defendants Taylor and McDaniels began to "twist and bend" plaintiff's hands, wrists and arms using "military combat assault techniques"; defendant Johnson held plaintiff in a headlock, putting pressure on plaintiff's neck to cause pain; and defendant Geri used a taser on him. Earlier, defendant Geri had spoken with defendants Ray, Cox, Kussmaul and Kool about using the taser and "all agree[d] that she could shock" plaintiff. Am Cp. ¶¶ 16.2-16.6, 16.17. After the assault, plaintiff complained to Huibregtse, but he refused to do anything. Id. at ¶¶ 18.1-18.3

I understand plaintiff to be raising several claims from these allegations: (1) defendants Geri, Taylor, McDaniels and Johnson should not have used any force when plaintiff refused to kneel because of a medical condition; (2) even if defendants Geri, Taylor, McDaniels and Johnson were authorized to use some force, the amount of force they used was excessive; (3) defendants Ray, Cox, Kussmaul and Kool should not have authorized Geri to use a taser on plaintiff; and (4) defendant Huibregtse was personally involved in the excessive force by refusing to take corrective action. I will allow plaintiff to proceed on the first two claims, but I am dismissing the last two.

In determining whether an officer has used excessive force against a prisoner in violation of the Eighth Amendment, the question is "whether force was applied in a good

faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320 (1986). The factors relevant to making this determination include:

- the need for the application of force
- the relationship between the need and the amount of force that was used
- the extent of injury inflicted
- the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them
- any efforts made to temper the severity of a forceful response

Id. at 321.

Plaintiff has stated a claim upon which relief may be granted with respect to his allegations against defendants Geri, Taylor, McDaniels and Johnson. Although the general rule is that prison officials are entitled to use some force when a prisoner refuses to comply with a "proper" order, Soto v. Dickey, 744 F.2d 1260, 1267 (7th Cir. 1984), plaintiff's allegations suggest that the order may not have been proper because defendants issued the order for the sole purpose of harassing plaintiff and knew that he was unable to kneel without harming himself. Richer v. La Crosse County, No. 01-C-649-C, 2002 WL 32341946, *5 (W.D. Wis. Dec. 5, 2002) ("If the order itself was made in bad faith or if the order involved patently unreasonable conduct, such as harming the inmate himself or another person, then it certainly could be argued that any amount of force used to insure obedience to the order would be excessive."). See also Felix v. McCarthy, 939 F.2d 699 (9th

Cir.1991) (holding that officer was not entitled to qualified immunity when he pushed and handcuffed inmate for refusing to comply with an order to clean up officer's spit). At summary judgment or trial, it will be plaintiff's burden to show that defendants' order was not proper and that defendants used force for the sole purpose of harming plaintiff rather than for a legitimate security purpose.

Alternatively, even if some force was reasonable, plaintiff alleges that defendants engaged in a variety of painful tactics to force his compliance, including the use of a taser, even though he was not posing a threat to anyone. Although defendants may have a different view of the facts, these allegations are sufficient at the pleading stage. Lewis v. Downey, 581 F.3d 467, 476-77 (7th Cir. 2009) (use of taser is not justified "every time an inmate is slow to comply with an order").

Plaintiff's allegations against defendants Ray, Cox, Kussmaul and Kool are simply too vague to state a claim upon which relief may be granted. Plaintiff alleges only that defendant Geri told him that these other defendants "all agree[d] that she could shock" plaintiff. However, plaintiff does not identify the circumstances under which these defendants may have approved the use of a taser. Because a taser does not constitute excessive force under all circumstances, e.g., Forrest v. Prine, 620 F.3d 739, 744 (7th Cir. 2010), simply agreeing in the abstract that a taser may be appropriate is not a violation of plaintiff's constitutional rights. Accordingly, I am dismissing this claim. If plaintiff uncovers additional information about the involvement Ray, Cox, Kussmaul and Kool in the alleged constitutional violation, he may seek leave to amend his complaint at that time.

Plaintiff's only allegation against defendant Huibregtse with respect to this claim is that he refused to take corrective action *after* the use of force when plaintiff complained about it. That allegation does not state a claim upon which relief may be granted. In a case brought under § 1983, "[o]nly persons who cause or participate in the violations are responsible." George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007). This means that plaintiff cannot sue an official simply because he rejected a grievance about the use of excessive force or failed to punish the officers. George, 507 F.3d at 609; Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002). Accordingly, I am dismissing the claim against Huibregtse.

B. Strip Search

Plaintiff's claim about the strip search is a continuation of his claim about the use of force. He alleges that defendant Geri directed defendant Patten to cut off plaintiff's clothes and that Patten "sexually molested" him "to inflict psychological and spiritual abuse" while defendants Taylor, McDaniels and Johnson restrained him. He says that it was unnecessary to use force because he told defendants that he would comply with a strip search. Am. Cpt. ¶¶ 16.9-16.11, dkt. #9. In addition, he alleges that defendant Ray denied a grievance in which plaintiff complained about the lack of procedural safeguards for conducting strip searches.

The circumstances are very limited under which a strip search conducted in the prison setting violates the Constitution. Both the Supreme Court and the Court of Appeals for the

Seventh Circuit have concluded that the privacy rights of prisoners are severely curtailed. Hudson v. Palmer, 468 U.S. 517, 527 (1984); Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994). Those courts have concluded that because security is of paramount concern in a prison, officials must have great discretion in determining when and what kind of search is appropriate. Even in the context of strip searches, prison officials do not need particularized suspicion of wrongdoing. Peckham v. Wisconsin Dept. of Corrections , 141 F.3d 694, 695 (7th Cir. 1998) (upholding various routine strip searches of prisoner, including those that occur "whenever prison officials undertake a general search of a cell block"). Rather, the court of appeals has held that as a general matter the Eighth Amendment governs the constitutionality of strip searches and that, under that standard, the question is whether the search was "conducted in a harassing manner intended to humiliate and inflict psychological pain." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003). Thus, so long as the officers conducted the search for the purpose of finding contraband or for another legitimate purpose, the search is not unconstitutional simply because the prisoner believes that officials had no reason to suspect that he was hiding anything.

In this case, plaintiff alleges that defendant Patten subjected him to a strip search for the sole purpose of abusing him, so I will allow him to proceed on this claim. In addition, I will allow him to proceed against defendant Geri because he alleges that she directed the strip search and against defendants Taylor, Johnson and McDaniels for failing to intervene. Backes v. Village of Peoria Heights, Illinois, 662 F.3d 866, 869-70 (7th Cir. 2011) ("A supervisor may still be personally liable for the acts of his subordinates if he approves of the

conduct and the basis for it.") (internal quotations omitted); Sanchez v. City of Chicago, 700 F.3d 919, 928-29 (7th Cir. 2012) ("[A] defendant officer's failure to intervene in the wrongful conduct of another officer, despite a reasonable opportunity do so, can be a form of personal involvement in that wrongful conduct.").

However, I am dismissing plaintiff's claim that defendant Ray denied his grievance about the lack of procedural safeguards in conducting strip searches. To begin with, it is unlikely that defendant Ray has authority as a grievance examiner to change or enact prison policies. Further, plaintiff does not allege that current rules permit officers to conduct strip searches for the sole purpose of harassing a prisoner, so it is not clear how more procedures could have prevented the alleged constitutional violation. In the absence of such a rule, I am not aware of a requirement under the Constitution to adopt particular procedures about the use of strip searches.

C. Medical Care

Plaintiff alleges that, after the strip search and use of force, he asked defendant Geri to see the nurse and for pain medication because his hand was swollen and in pain and he believed it was broken. In addition, he had "pain in his heart from being shocked" with the taser. Geri refused to allow plaintiff to see the nurse. Although Geri directed other staff to give plaintiff some aspirin, she gave it to him through the trap door of his cell without putting it in a paper cup. Plaintiff refused to take the aspirin because the trap door "is used by staff to retrieve all kinds of unsanitary clothing and items." Plaintiff says that he

discovered later that he suffered a hairline fracture to his right wrist because of the excessive force. Defendants Ray and Huibregtse denied a grievance plaintiff filed in which he complained that he still had pain in his hand. Am. Cpt. ¶¶ 20.1-20.4, 29.1, dkt. #9.

A prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff's claim has three elements:

(1) Did plaintiff need medical treatment?

(2) Do did defendant Geri know that plaintiff needed treatment?

(3) Despite her awareness of the need, did defendant Geri consciously refuse to take reasonable measures to provide the necessary treatment?

Plaintiff has stated a claim upon which relief may be granted under this standard with

respect to his allegation that defendant Geri refused to take him to the nurse. Although plaintiff alleges that Geri offered him aspirin, a prisoner may have an Eighth Amendment claim even when he receives some treatment. Gonzalez v. Feinerman, 663 F.3d 311, 314 (7th Cir. 2011). If Geri had reason to believe that aspirin would not be sufficient to treat any injuries plaintiff may have suffered, then her alleged refusal to afford plaintiff additional treatment could be a constitutional violation. Davis v. Jones, 936 F.2d 971, 972 (7th Cir. 1991) ("Whether the injury is actually serious is a question best left to a physician."). At summary judgment or trial, plaintiff will have to prove that he had a serious medical need and that Geri knew of a substantial risk that aspirin would not resolve the issue.

I am dismissing plaintiff's claim that defendant Geri violated his constitutional rights by refusing to give him aspirin in a paper cup. Although he alleges that the trap door in his cell was "unsanitary," he includes no allegations in his complaint suggesting that the pill's momentary contact with the trap would endanger his health in any way, much less that Geri knew that it would endanger his health.

I am also dismissing plaintiff's claim that defendants Ray and Huibregtse violated his constitutional rights by denying a grievance in which he complained that his hand still hurt from the use of force. Under Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009), nonmedical prison staff such as Huibregtse (the warden) and Ray (a grievance examiner) are "entitled to relegate to the prison's medical staff the provision of good medical care."

D. Disciplinary Proceedings

Plaintiff alleges that, after the use of force and strip search, defendant Geri gave him a conduct report to "cover up" and "legitimize" defendants' illegal conduct. (Plaintiff does not say what the charge was.) In anticipation of his hearing, plaintiff requested the presence of seven witnesses, including defendants Johnson, McDaniels, Geri and Patten, along with two officers named Brown and "nurse Mary." Defendant Boisen denied plaintiff's request with respect to all but two of the witnesses. Plaintiff believes that Boisen was biased because he had a relationship with defendant Geri. Boisen found plaintiff guilty and disciplined him with 270 days in segregation. Am. Cpt. ¶¶ 17.1-17.12, 19.1, dkt. #9. I understand plaintiff to be raising the following claims: (1) defendant Geri violated plaintiff's right to due process by giving him a false conduct report; (2) defendant Boisen violated plaintiff's right to due process because he was biased; (3) defendant Boisen violated plaintiff's right to due process by denying many of plaintiff's requests for witnesses; and (4) defendant Huibregtse denied plaintiff's right to due process by approving the decision.

With respect to plaintiff's claim against defendant Geri, the court of appeals has held that it "will not overturn a disciplinary decision solely because evidence indicates the claim was fraudulent." McPherson v. McBride, 188 F.3d 784, 787 (7th Cir. 1999); see also Lagerstrom v. Kingston, 463 F.3d 621, 624-25 (7th Cir. 2006). Although this law may seem unfair, it relates to the nature of the due process clause, which is directed primarily at improving the accuracy of decisions through fair *procedures* rather than direct review of the evidence. McPherson, 188 F.3d at 787 ("Therefore, even assuming fraudulent conduct on

the part of prison officials, the protection from such arbitrary action is found in the procedures mandated by due process.").

With respect to plaintiff's claims against defendants Boisen and Huibregtse, the first question is whether plaintiff was deprived of his liberty within the meaning of the due process clause. In the prison context, a prisoner is not entitled to process under the Constitution unless he is subjected to an "atypical and significant hardship." Sandin v. Conner, 515 U.S. 472, 484 (1995). I will assume for the purpose of this screening order that a sentence of 270 days in segregation is sufficient to meet that standard. Marion v. Columbia Correctional Institution, 559 F.3d 693, 697 (7th Cir. 2009) (disciplinary segregation can trigger due process protections depending on the duration and conditions of segregation; prisoner stated a claim under due process clause by alleging that he was placed in segregation for 240 days without due process).

The next question is whether plaintiff received the process he was due. Neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has determined the process a prisoner is due before he is placed in long term segregation. When a prisoner loses good time credits, courts have held that a prisoner is entitled to: (1) written notice of the claimed violation at least 24 hours before hearing; (2) an opportunity to call witnesses and present documentary evidence (when consistent with institutional safety) to an impartial decision aker; and (3) a written statement by the fact finder of the evidence relied on and the reasons for the disciplinary action. Wolff v. McDonnell, 418 U.S. 539 (1974); Scruggs v. Jordan, 485 F.3d 934, 939 (7th Cir. 2007). However, because plaintiff did not lose good time

credits, that standard does not necessarily apply in this case.

In Wilkinson v. Austin, 545 U.S. 209, 226 (2005), the Supreme Court considered the process a prisoner was due before being transferred to a "supermax" prison and concluded it was sufficient if the prisoner received notice of the reasons for the transfer and an opportunity to rebut those reasons. Because one of the conditions of the facility at issue in Wilkinson was placement in segregation, the process required in that case is instructive. Thus, it is questionable whether plaintiff had a right to call witnesses, present particular pieces of evidence or even have a hearing in this case. Id. at 228. ("Were Ohio to allow an inmate to call witnesses or provide other attributes of an adversary hearing before ordering transfer to OSP, both the State's immediate objective of controlling the prisoner and its greater objective of controlling the prison could be defeated.").

Under Wilkinson, plaintiff was not entitled to call witnesses at his hearing. However, even under Wolff, "[p]rison officials are afforded discretion to deny witnesses in order to keep disciplinary hearings within reasonable limits, because allowing the witness may create a risk of reprisal, undermine authority or otherwise threaten institutional security, or because the witness's testimony would be irrelevant or cumulative." Marion v. Columbia Correctional Institution, No. 07-C-243-C, 2009 WL 1181255 (W.D. Wis. May 1, 2009)(citing Wolff, 418 U.S. at 566; Redding v. Fairman, 717 F.2d 1105, 1114 (7th Cir. 1983)).

In this case, plaintiff acknowledges that defendant Boisen allowed him to call two witnessesthough he does not say which ones. Under Wis. Admin. Code § DOC 303.81,

"[e]xcept for good cause, an inmate may present no more than 2 witnesses in addition to the reporting staff member or members." Because the rule is directed at preventing cumulative testimony, I cannot say that it is unreasonable on its face. Further, plaintiff does not explain in his complaint why the two witnesses were not sufficient. Although that problem could be addressed by allowing plaintiff to amend his complaint, it would be pointless to do so in light of my conclusion that plaintiff was not entitled to call witnesses under Wilkinson.

I reach a different conclusion with respect to plaintiff's allegation that defendant Boisen was a biased decision maker and that defendant Huibregtse knew he was biased but refused to overturn the decision. "A hearing where the decisionmaker has prejudged the outcome does not comport with due process because it effectively denies the [plaintiff] the opportunity to respond to the accusations against him." Powers v. Richards, 549 F.3d 505, 511-12 (7th Cir. 2008). Accordingly, I will allow plaintiff to proceed on this claim. At summary judgment or trial, plaintiff will have to show through specific evidence that Boisen was not an impartial decision maker and that Huibregtse approved the decision despite knowing that Boisen was biased. Id. at 512.

E. Requests for Documents

Plaintiff alleges that a Wisconsin prisoner advocacy organization submitted a request to the prison for records relating to the use of force in this case but "defendants" denied the request so that they could "conceal evidence." The organization then sent plaintiff "some legal documents" and "photocopies" to help "bring the events . . . to the public," but

"defendants" refused to deliver the documents. Plaintiff filed a grievance, but defendant Trumm denied it on the ground that defendant Huibregtse had authority to censor legal mail. Am. Cpt. ¶¶ 32.1-32.9, dkt. #9.

It is not clear whether plaintiff is challenging the alleged refusal to turn over documents to the prisoner advocacy organization. If he is, I cannot allow him to proceed on that claim. "[T]here is no general constitutional 'right of access' to information that a governmental official knows but has not released to the public." United States v. Blagojevich, 612 F.3d 558, 562 (7th Cir. 2010). Although the Wisconsin Open Records Law, Wis. Stat. §§ 19.31-19.31, requires the release of documents not covered by an exception to the rule, only the person who requested the document can file a lawsuit under the statute. Wis. Stat. § 19.37.

With respect to the refusal to deliver mail from the advocacy organization, I understand plaintiff to contend that defendants Huibregtse and Trumm violated his First Amendment rights by authorizing the censorship and denying plaintiff's grievance about the issue. Plaintiff's claim is governed by the standard set forth in Turner v. Safley, 482 U.S. 78 (1987), which is whether the restriction on the publication is reasonably related to a legitimate penological interest. In determining whether a reasonable relationship exists, the Supreme Court usually considers four factors: whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; whether alternatives for exercising the right remain to the prisoner; what impact accommodation of the right will have on prison administration; and whether there are other ways that prison officials can

achieve the same goals without encroaching on the right. Id. at 89.

Any censorship of a prisoner's written materials may violate the First Amendment unless there is adequate justification for it. King v. Federal Bureau of Prisons, 415 F.3d 634, 638 (7th Cir. 2005) (reversing dismissal of prisoner's claim that defendants refused to allow plaintiff to purchase book on computer programming because defendants had not shown justification for decision). Because an assessment under Turner requires a district court to evaluate the prison officials' reasons for the restriction, the Court of Appeals for the Seventh Circuit has suggested that district courts should wait until summary judgment to determine whether there is a reasonable relationship between a restriction and a legitimate penological interest, e.g., Ortiz v. Downey, 561 F.3d 664, 669-70 (7th Cir. 2009); Lindell v. Frank, 377 F.3d 655, 658 (7th Cir. 2004), unless it is clear from the complaint and any attachments that the restriction is justified. Munson v. Gaetz, 673 F.3d 630, 635 (7th Cir. 2012). Because it is not clear from plaintiff's complaint why defendants refused to deliver his mail, I will allow him to proceed on this claim.

I give plaintiff a few words of caution. First, plaintiff should be aware that courts "must accord substantial deference to the professional judgment of prison administrators," Overton v. Bazzetta, 539 U.S. 126, 132 (2003), particularly on matters of security. E.g., Thornburgh v. Abbott, 490 U.S. 401 (1989) (upholding regulation that prohibited prisoners from receiving publications "detrimental to the security, good order, or discipline of the institution"); Singer v. Raemisch, 593 F.3d 529 (7th Cir. 2010) (deferring to prison staff's assessment that role playing games were detrimental to security); Koutnik v. Brown, 456

F.3d 777 (7th Cir. 2006) (deferring to prison staff's assessment regarding gang symbols). Thus, if defendants come forward with "a plausible explanation" for their actions, Singer, 593 F.3d at 536, plaintiff may be required to come forward with evidence showing that it would be unreasonable to believe that the mail posed a threat to security or other legitimate penological interest. Beard v. Banks, 548 U.S. 521 (2006) (concluding that prisoner failed to meet burden on summary judgment, because he failed to "offer any fact-based or expert-based refutation" of defendants' opinion).

On the other hand, defendants should be aware that deference does not imply abdication. Miller El v. Cockrell, 537 U.S. 322, 340 (2003). Even under the deferential Turner standard, courts have a duty to insure that a restriction on the constitutional rights of prisoners is not an exaggerated response to legitimate concerns. As the Supreme Court held in Beard, 548 U.S. at 535, "Turner requires prison authorities to show more than a formalistic logical connection between a regulation and a penological objective."

ORDER

IT IS ORDERED that

1. Plaintiff Prince Atum-Ra Uhuru Mutawakkil, also known as Norman Green, is GRANTED leave to proceed on the following claims:

(a) in November 2007 defendants Geri, Taylor, McDaniels and Johnson used excessive force against plaintiff, in violation of the Eighth Amendment;

(b) on the same day, defendants Patten, Geri, Taylor, Johnson and McDaniels

subjected plain to a strip search, in violation of the Eighth Amendment;

(c) defendant Geri refused to take plaintiff to the nurse after the use of force, in violation of the Eighth Amendment;

(d) defendant Boisen was a biased decision maker at plaintiff's disciplinary hearing and defendant Huibregtse approved the decision, in violation of plaintiff's right to due process;

(e) defendants Huibregtse and Trumm violated plaintiff's First Amendment rights by authorizing the censorship of plaintiff's mail and denying plaintiff's grievance about the issue.

2. The following claims are DISMISSED for plaintiff's failure to state a claim upon which relief may be granted:

(a) defendants Ray, Cox, Kussmaul and Kool agreed that Geri could shock plaintiff;

(b) defendant Huibregtse was personally involved in the excessive force by refusing to take corrective action;

(c) defendant Ray denied plaintiff's grievance about the lack of procedural safeguards in conducting strip searches;

(d) defendant Geri refused to give plaintiff aspirin in a paper cup;

(e) defendants Ray and Huibregtse denied a grievance in which plaintiff complained that his hand still hurt from the use of force;

(f) defendant Geri gave plaintiff a conduct report to "cover up" and "legitimize"

defendants' illegal conduct;

(g) defendant Boisen allowed only two of the seven witnesses plaintiff asked to call at a disciplinary hearing;

(h) unnamed prison officials refused a document request from a prisoner advocacy organization.

3. All other claims are DISMISSED WITHOUT PREJUDICE to plaintiff's refiling them at a later date.

4. The amended complaint is DISMISSED as to defendants Kussmaul, Kool, Dunbar, Ray, Gilberg, Cox, Thorpe, Beerkircher, Jane Doe #1 and Jane/John Doe #2.

5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

7. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to

answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

8. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

Entered this 20th day of March, 2013.

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