

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

RICKY N. ALEXANDER,

Plaintiff,

v.

OPINION & ORDER

14-cv-849-jdp

DODGE CORRECTIONAL INSTITUTION,
LIEUTENANT R. RASMUSSEN,
LIEUTENANT D. STRELOW, and
DCI COMPLAINT EXAMINER,

Defendants.

Pro se prisoner Ricky Alexander has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that defendant prison officials have violated his Fifth and Fourteenth Amendment rights to due process. Dkt. 1. Specifically, plaintiff alleges that defendants improperly disciplined him for his involvement in a physical altercation with another inmate. Plaintiff also alleges that defendants are impermissibly continuing to discipline him, despite the fact that a Wisconsin state court dismissed the criminal charges against him that resulted from the incident. To supplement his complaint, plaintiff has filed a number of exhibits relating to the physical altercation. Dkt. 9.

Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1). The next step in this case is for me to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In screening any pro se litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After reviewing the complaint with this principle in mind, I conclude that it must be dismissed for failure to state a claim upon which relief can be granted.

ALLEGATIONS OF FACT

In his complaint, plaintiff alleges the following facts.

Plaintiff is currently a prisoner at the Wisconsin Secure Program Facility (WSPF), located in Boscobel, Wisconsin. The relevant events in this case occurred while plaintiff was incarcerated at the Dodge Correctional Institution (DCI). Defendants Lieutenant R. Rasmussen, Lieutenant D. Strelow, and “DCI complaint examiner” are employed at DCI.¹

On February 18, 2013, plaintiff was involved in a physical altercation with another inmate at DCI, during which plaintiff struck the other inmate in the face. After an investigation, prison officials determined that the other inmate initiated the confrontation by threatening plaintiff and then rushing to grab him. The other inmate wrote a statement to this effect and Strelow signed it. At an internal disciplinary hearing on March 26, 2013, Rasmussen found plaintiff guilty of battery. Plaintiff was sentenced to 240 days in segregation, charged restitution, and transferred to WSPF. But according to plaintiff, Rasmussen based his decision on an incomplete conduct report that Strelow wrote on March 13, 2013.

In addition to the prison’s internal discipline, plaintiff also faced battery charges in the Wisconsin Circuit Court for Dodge County. Plaintiff states that he was “acquitted” of these charges, although it appears that his case was dismissed on the prosecutor’s motion before plaintiff was brought to trial. Even though the criminal prosecution ended without a guilty verdict, DCI is continuing to charge plaintiff restitution, and he has been denied an early hearing before the program review committee—during which plaintiff could receive a new security designation and be transferred to a different facility.

¹ Plaintiff also names DCI as a defendant.

ANALYSIS

I understand plaintiff to assert two claims against defendants. First, plaintiff contends that the initial disciplinary decision on March 26, 2013, was procedurally improper. Plaintiff alleges that Rasmussen relied on an incomplete conduct report that Strelow wrote, and that Rasmussen incorrectly found that plaintiff had waived his due process rights. Second, plaintiff contends that his continued punishment for the physical altercation is unlawful because a state court acquitted him of any criminal wrongdoing. Because plaintiff's factual allegations and supporting exhibits confirm that he cannot succeed on either of these claims, I will dismiss the complaint in its entirety for failure to state a claim upon which relief can be granted.

Before addressing the substance of plaintiff's claims, I note that he cannot sue DCI because it is prison, and not an individual. Institutions are not proper defendants in an action under § 1983. *See* 42 U.S.C. § 1983 ("Every *person* who . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.") (emphasis added); *Thomas v. Illinois*, 697 F.3d 612, 613 (7th Cir. 2012) (section 1983 suit against a state department of corrections was barred); *Bonner v. St. Croix Cnty. Jail*, No. 03-cv-662, 2003 WL 23208941, at *1 (W.D. Wis. Dec. 11, 2003) ("As a physical structure, the 'jail' cannot be sued."). Thus, regardless of the claims, plaintiff cannot proceed against DCI.

Plaintiff's first claim alleges that Rasmussen and Strelow violated his right to procedural due process during the initial disciplinary hearing. In the context of prison discipline, due process requires that prisoners receive:

- (1) advance (at least 24 hours before hearing) written notice of the claimed violation;
- (2) the opportunity to be heard before an impartial decision maker;
- (3) the opportunity to call witnesses and present documentary evidence (when consistent with institutional

safety); and (4) a written statement by the fact-finder of the evidence relied on and the reasons for the disciplinary action.

Scruggs v. Jordan, 485 F.3d 934, 939 (7th Cir. 2007) (internal citations and quotation marks omitted); *see also Wolff v. McDonnell*, 418 U.S. 539, 564-71 (1974). In his supplemental filings, plaintiff included two copies of the notice that he received from prison officials outlining these rights. Dkt. 9-1, at 6-7. The first copy bears plaintiff's signature in the section acknowledging receipt of the notice, but not in the section waiving his rights. *Id.* at 6. The second copy has "x" marks in the waiver section, indicating that plaintiff waived his due process rights. *Id.* at 7. Plaintiff did not sign the waiver section in the second copy, but a witness and a security director did. *Id.* Citing these two documents, plaintiff alleges that he never waived his due process rights and that Rasmussen incorrectly concluded to the contrary during the hearing. Dkt. 9, at 2.

Regardless of whether plaintiff validly waived his due process rights, or whether Rasmussen was correct to conclude that plaintiff did so, the complaint and supporting exhibits affirmatively demonstrate that plaintiff *actually received* the process to which he was due. Plaintiff was present at the hearing, and he received timely notice of it. Dkt. 9-1, at 6-7 (providing timely notice); *id.* at 8 (indicating plaintiff was present). Plaintiff was also provided with a written statement of the evidence on which Rasmussen relied and the reasons for the disciplinary decision—a statement that plaintiff filed with the court. *Id.* at 8. Finally, nowhere in plaintiff's complaint does he allege that he was prevented from speaking, calling witnesses, or presenting evidence. *See generally* Dkt. 1 and Dkt. 9.

Instead, plaintiff contends that defendants violated his due process rights because "Rasmussen based his decision [on an] incomplete conduct report by" Strelow. Dkt. 1, at 4; *see also* Dkt. 9, at 2 ("DCI violated inmate Alexander's procedural due process because the disciplinary committee based its decision solely on an incomplete conduct report. [T]hat did not

contain all the institution investigation information.”). Although plaintiff does not explain what he means by an “incomplete conduct report,” I assume that he is referring to the fact that Strelow’s report did not mention that the other inmate who was involved in the altercation provided a written statement admitting to being the aggressor. Dkt. 9-1, at 4-5.

Even assuming that Strelow intentionally omitted the other inmate’s statement from his report, plaintiff’s complaint would still fail to state a claim. *See McPherson v. McBride*, 188 F.3d 784, 787 (7th Cir. 1999) (“[A]s long as procedural protections are constitutionally adequate, we will not overturn a disciplinary decision solely because evidence indicates the claim was fraudulent.”); *Hanrahan v. Lane*, 747 F.2d 1137, 1141 (7th Cir. 1984) (“[A]n allegation that a prison guard planted false evidence which implicates an inmate in a disciplinary infraction fails to state a claim for which relief can be granted where the procedural due process protections as required in *Wolff v. McDonnell* are provided.”). Simply put, a hearing officer’s reliance on incomplete or even false evidence does not give rise to a due process violation if the inmate receives the above-mentioned procedural protections. Thus, plaintiff has not identified a constitutional defect with his disciplinary hearing. Rather, plaintiff has affirmatively demonstrated that he received the process to which he was due.

Plaintiff’s second claim generally challenges his continued discipline and defendants’ refusal to afford him an early hearing before the program review committee. Plaintiff implies that these decisions are unlawful because a state court acquitted him of the battery charge. As an initial matter, there is a difference between an acquittal (*i.e.*, a finding of not guilty) and a prosecutor’s motion to dismiss before trial. Although plaintiff alleges that his case involved the

first of these dispositions, the publically available docket sheet indicates that plaintiff's case was actually dismissed before trial on the prosecutor's motion.²

The actual result of plaintiff's state court proceedings is not important because the disposition of plaintiff's criminal case was completely separate from the prison's internal disciplinary process. *See Garrity v. Fiedler*, 41 F.3d 1150, 1153 (7th Cir. 1994) ("The prison disciplinary process determines whether the defendant has violated the conditions of his incarceration and is designed to maintain institutional security and order. A criminal prosecution is designed to punish the defendant for a violation of the criminal laws. . . . [T]he two proceedings serve different ends.") (internal citations and quotation marks omitted). Thus, the mere fact that plaintiff was not found guilty of a crime does not prevent defendants from continuing internal discipline for plaintiff's violation of a prison regulation. Moreover, plaintiff has not explained why the resolution of his criminal charges entitles him to an early hearing or how defendants have denied him such a hearing. Indeed, it seems unlikely that Rasmussen and Strelow—who are DCI personnel—are personally involved in the decision to deny plaintiff an early hearing at WSPF. Thus, plaintiff cannot succeed on this claim.

Finally, I note that plaintiff's prayer for relief asks the court to award "restitution for racial discrimination." Dkt. 1, at 5. Although plaintiff refers to the Equal Protection Clause in the substance of his complaint, he does not identify any discriminatory treatment on the basis of his race. *See id.* at 3-4. Plaintiff's supplemental filing explains that the other inmate, who is white, "was not charged with anything and still remains at DCI." Dkt. 9, at 3. But these appear

² Plaintiff did not provide a case number for his criminal prosecution in Dodge County Circuit Court. But the electronic record of case number 2013CF000119 shows that Ricky N. Alexander was charged with "battery by a prisoner," and the case was filed on April 26, 2013. Judge Joseph G. Sciascia presided over the matter, and he dismissed the charges in May 2014. These details match those that plaintiff provides in his complaint.

to be tangential issues in a complaint that principally alleges inadequate procedural process during a disciplinary hearing.

Providing plaintiff with an opportunity to amend his complaint would be futile in this case because he has alleged facts demonstrating that he received the procedural protections to which he was entitled. Nor could plaintiff transform the allegations about his state criminal proceedings into a due process claim. I will therefore dismiss plaintiff's complaint in its entirety for failure to state a claim upon which relief can be granted.

ORDER

IT IS ORDERED that:

1. Plaintiff Ricky Alexander is DENIED leave to proceed on his Fifth and Fourteenth Amendment claims against defendants for violations of his right to due process, and the complaint is DISMISSED in its entirety for failure to state a claim upon which relief can be granted.
2. A strike will be recorded against plaintiff, pursuant to 28 U.S.C. § 1915(g).
3. The clerk of court is directed to close this case.

Entered June 2, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge