

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

---

JOHNSON CARTER,

Plaintiff,  
v.

OPINION & ORDER

16-cv-252-wmc

JANE DOE,

Defendant.

---

*Pro se* plaintiff Johnson Carter filed this complaint under 28 U.S.C. § 1983, alleging that the delay by Health Services Unit (“HSU”) staff at Jackson Correctional Institute (“JCI”) in treating his collar bone injury violated his First and Eighth Amendment rights. However, Carter did not name any individual HSU staff member as a defendant in his complaint. The court screened his complaint, concluding that he may have an Eighth Amendment claim against an HSU staff member, but that he would have to amend his complaint to proceed against that defendant. (*See* Order, dkt. #6, at 4.) The court also held that it was unlikely that his First Amendment claim could proceed, but reserved ruling on that issue. Carter now has filed an amended complaint, naming Jane Doe as the sole defendant and explaining that he does not know her name. (Am. Compl., dkt. #7.) He also appears to be attempting to revive his First Amendment claim. For the following reasons, Carter can now proceed against Jane Doe, on both his Eighth and First Amendment claims.

**I. Eighth Amendment**

As to his Eighth Amendment claim, Carter alleges in his amended complaint that defendant Jane Doe is a female nurse who he saw on multiple occasions when he visited JCI’s HSU. His visits to her included his requests for treatment following his collarbone injury. As

the court has already determined that his allegations about the delay in treatment he experienced related to his collarbone injury are sufficient to state a deliberate indifference claim, Carter may now proceed on an Eighth Amendment claim against Jane Doe. As Doe is the only named defendant, the court will also grant him leave to proceed against Lizzie Tegels, JCI's warden, but only for the purpose of discovering Jane Doe's name. Early on in this lawsuit, I will hold a preliminary pretrial conference. At the time of the conference, I will discuss with the parties the most efficient way to obtain identification of Jane Doe and will set a deadline within which plaintiff is to amend his complaint to specifically substitute Jane Doe's real name as the only defendant in this lawsuit.

## **II. First Amendment**

Turning to Carter's First Amendment claim, it is worth repeating that to state a claim for retaliation under the First Amendment, plaintiff must allege that: (1) he was engaged in constitutionally protected activity; (2) the defendant's conduct was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity. *Gomez v. Randle*, 680 F.3d 859, 866-67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541 (7th Cir. 2009).

In his original complaint, Carter stated that the defendants retaliated against him because he contacted Senator Taylor about his medical treatment at JCI. The court did not permit him to proceed on this claim because Carter had not alleged that any defendant either knew about his letter to the senator, or delayed treating his collarbone injury as a result of it. However, the court reserved its final holding on this issue until Carter amended his

complaint, and the additional facts Carter now provides in his amended complaint are sufficient to state a retaliation claim against Doe.

Carter alleges in his amended complaint that Doe knew about his initial contact with Senator Taylor. He further alleges that when he went to HSU after he wrote to the senator, Doe spoke to him in an angry way, and she told him that complaining to the senator would not do him any good. According to Carter, she made these statements and knew about his contact with the senator *before* his collarbone accident occurred. It thus appears that Doe knew about his letter to Senator Taylor, and it is reasonable to infer from the statement she made that her delay in treating him was motivated by the fact that he contacted the senator complaining about the treatment he received. Accordingly, the court will also permit Carter to proceed on a First Amendment claim against Jane Doe.

#### ORDER

IT IS ORDERED that:

- (1) Plaintiff Johnson Carter is GRANTED leave to proceed on his First and Eighth Amendment claims against defendant Jane Doe.
- (2) The court is temporarily adding JCI's warden, Lizzie Tegels, as a defendant for the sole purpose of discovering Jane Doe's identity.
- (3) 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 Lizzie Tegels in lieu of service on the defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendant.
- (4) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendants. The court will

disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

- (5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (6) If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 18<sup>th</sup> day of November, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge