Mixon v. Stovall et al Doc. 8

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

WILLIE MIXON PLAINTIFF

v. Civil No. 4:13-cv-04099

SERGEANT JOHNNY WELCH DEFENDANTS

ORDER

Plaintiff Willie Mixon proceeds in this action *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Plaintiff is currently incarcerated in the Arkansas Department of Corrections East Arkansas Regional Unit in Brickeys, Arkansas. Plaintiff filed his original Complaint on October 23, 2013. ECF No. 1. Currently before the Court is Plaintiff's Motion to Amend Complaint. ECF No. 7.

Within his Motion to Amend, Plaintiff includes his Amended Complaint. ECF No. 7. In his Amended Complaint, Plaintiff alleges his constitutional rights were violated on December 6, 2010 when Sgt. Welch sprayed Plaintiff with "O.C. pepper spray." ECF No. 7, pp. 1-2. Plaintiff also includes his requested relief and his request for a jury trial.[1] ECF No. 7, p. 3. Plaintiff does not, however, list Sheriff Ron Stovall or Warden Gary Turner as defendants in his Amended Complaint.

Rule 15 of the Federal Rules of Civil Procedure governs amended pleadings. Rule 15(a) provides in pertinent part:

[1] The Court notes that Plaintiff also requested a jury trial in his original Complaint. ECF No. 1.

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> (1) ***Amending as a Matter of Course***. A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
> (2) ***Other Amendments***. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a).

Here, Plaintiff's Complaint has not yet been served, and the instant Motion to Amend is Plaintiff's first request to amend his Complaint. Therefore, Plaintiff is entitled to an amendment as a matter of course. *See* Fed. R. Civ. P. 15(a).

Accordingly, Plaintiff's Motion to Amend (ECF No. 7) is **GRANTED.** The Clerk is **DIRECTED** to file Plaintiff's Motion to Amend (ECF No. 7) as Plaintiff's Amended Complaint. The Clerk is further **DIRECTED** to administratively terminate Sheriff Ron Stovall and Warden Gary Turner as Defendants from this matter pursuant to Plaintiff's Amended Complaint.

IT IS SO ORDERED this 19th day of December 2013.

/s/ *J. Marschewski*
HON. JAMES R. MARSCHEWSKI
CHIEF UNITED STATES MAGISTRATE JUDGE