

**United States District Court
Northern District of Indiana**

DEMOND CARR,)	
)	
Plaintiff,)	
)	Civil Action No. 3:09-CV-301 JVB
v.)	
)	
CORRECTIONAL MEDICAL SERVICES,)	
GERALD MYERS, DIANE KAMINSKY,)	
and ELTON AMOS,)	
)	
Defendants.)	

OPINION AND ORDER

Demond Carr, a *pro se* prisoner, filed a complaint under 42 U.S.C. § 1983 alleging that prison officials were deliberately indifferent in treating his skin condition. This court dismissed the complaint pursuant to 28 U.S.C. § 1915A, because the claim as presented did not state a claim for relief under the Eighth Amendment. (DE 12.)

Presently before the court is Carr’s timely motion to amend or alter the judgment pursuant to Federal Rule of Civil Procedure 59. (DE 14.) Based on the additional information provided by Carr in his motion, it appears that he might be able to state a claim under the Eighth Amendment if he files an amended pleading. Accordingly, in the interests of justice, the court will vacate the judgment and afford Carr an opportunity to present his claim in an amended pleading.

Carr has also filed a motion seeking to “present evidence.” (DE 15.) This motion will be denied, as the pleading stage is not the appropriate time to present evidence. However, Carr may attach to his amended complaint whatever documentary evidence he believes supports his claim. Finally, Carr has filed a petition for leave to proceed *in forma pauperis* on appeal. (DE 17.) The

petition will be denied as moot, since the judgment has now been vacated and there is no basis for Carr to proceed with an appeal.

For these reasons, the court:

- (1) **GRANTS** the motion for reconsideration (DE 14);
- (2) **VACATES** the judgment (DE 13);
- (3) **DENIES** the motion to present evidence (DE 15);
- (4) **DENIES** the petition for leave to appeal *in forma pauperis* (DE 17) as moot;
- (5) **DIRECTS** the clerk of court to place this cause number on a blank Prisoner 42

U.S.C. § 1983 Complaint form and send it to Demond Carr;

(6) **GRANTS** Demond Carr to and including January 29, 2009, to file an amended pleading that sets forth his Eighth Amendment claim; and

(7) **CAUTIONS** Demond Carr that if he does not respond by the above deadline, this case will be dismissed without further notice.

SO ORDERED on December 16, 2009.

s/ Joseph S. Van Bokkelen
Joseph S. Van Bokkelen
United State District Judge
Hammond Division