

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

JUL 23 2014

PATRICK KEANEY Clerk, U.S. District Court

By Deputy Clerk

MARIO WILLIAMS,)
)
Plaintiff,)
)
v.)
)
TIM WILKINSON and)
BRIAN WIDEMAN,)
)
Defendants.)

No. CIV 13-206-RAW-SPS

OPINION AND ORDER

On March 18, 2014, Defendant Justin Jones was dismissed from this action for plaintiff's failure to state a claim against Jones (Docket No. 28). On June 27, 2014, plaintiff filed a motion to amend his complaint to reinstate Jones as a defendant and to add Corrections Corporation of America as a defendant in this action (Docket No. 42). Plaintiff asserts in his motion that "he mistakenly forgot to allege more than the fact Defendant Jones is the DOC Director and is responsible for OP-030112 'Religious Policy and Regulations,' [t]hus not properly linking Defendant Jones to the incidents set forth in the complaint" (Docket No. 42 at 1). He gives no reason for his failure to name Corrections Corporation of America in his original complaint.

A review of the record indicates plaintiff's motion to amend was received more than a year after commencement of this action on April 29, 2013, and more than three months after Justin Jones was dismissed. In addition, the motion was filed after the remaining defendants had filed a special report (Docket No. 40) and a motion to dismiss (Docket No. 41).

It is well settled in this circuit that untimeliness alone is a sufficient reason to deny leave to amend, especially when the party filing the motion has no adequate explanation for the delay. Furthermore, “[w]here the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial.”

Frank v. U.S. West, Inc., 3 F.3d 1357, 1365-66 (10th Cir. 1993) (citations omitted).

Here, the court finds plaintiff’s motion to amend his complaint is untimely, and when he filed the original complaint, he knew or should have known the facts on which the proposed amendment is based. The court further finds plaintiff has provided no adequate explanation for his delay in filing the proposed amended complaint.

ACCORDINGLY, plaintiff’s motion to amend his complaint (Docket No. 42) is DENIED.

IT IS SO ORDERED this 23rd day of July 2014.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE