

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

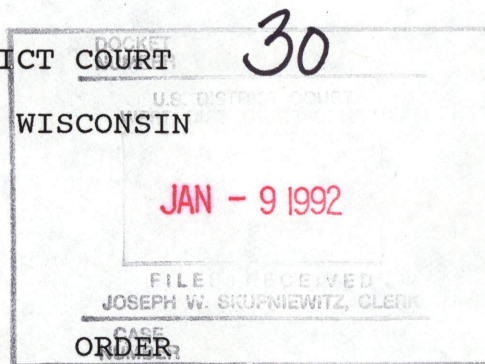
DEE FARMER,

Plaintiff,

v.

EDWARD BRENNAN,
DENNIS KURZYDLO,
LARRY E. DUBOIS,
N. W. SMITH, MICHAEL
QUINLAN and CALVIN EDWARDS,

Defendants.



91-C-716-S

On October 28, 1991 defendants Edward Brennan, Dennis Kurzydlo, Larry E. DuBois and N.W. Smith filed a motion to dismiss plaintiff's complaint. Defendants' motion to dismiss plaintiff's complaint for failure to state a claim will be denied because plaintiff filed an amended complaint on December 13, 1991.

Defendants move to dismiss plaintiff's complaint on the basis of qualified immunity. Recognizing the arguments raised by defendants pursuant to Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), the Court cannot make the necessary factual determinations on a motion to dismiss. These arguments are appropriately raised on a motion for summary judgment.

Defendants DuBois and Smith move to dismiss plaintiff's complaint based on insufficient service and lack of personal

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Pltf. and AUSA Van Hollen

this 9 day of January, 19 92

By Ellie Blawie
Secretary to Judge John C. Shabaz

jurisdiction. They claim that they were not served with the summons and complaint according to the Federal Rules of Civil Procedure. Defendants contend that they should be personally served as required under Rule 4(d)(1) since they are being sued in their individual capacities.

Defendants Smith and DuBois are officers of the United States and are sued by plaintiff in their individual and official capacities. Service upon an officer of the United States may be made by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer. Rule 4(d)(5), Federal Rules of Civil Procedure. Service has been perfected by the United States Marshal upon defendants DuBois and Smith according to this rule. This service is sufficient and defendants' motion to dismiss on the basis of insufficient service will be denied.

Defendants Smith and DuBois claim that this Court does not have personal jurisdiction over them. Personal jurisdiction over an individual requires that the individual have sufficient contacts with the State of Wisconsin. International Shoe v. Washington, 326 U.S. 310 (1945). In both the original and amended complaint plaintiff alleges that defendant DuBois, the Regional Director of the Bureau of Prisons North Central Office, made decisions concerning inmates located at the Federal Correctional Institution-Oxford (FCI-Oxford) located in the State of Wisconsin. Plaintiff alleges that defendant Smith, the Correctional Service Administrator of the Bureau of Prisons North Central Office, also

made decisions concerning inmates at (FCI-Oxford). Both these defendants have sufficient contacts with Wisconsin for the Court to exercise personal jurisdiction over them particularly where plaintiff alleges they took specific actions affecting him while he was incarcerated in Wisconsin. The motion to dismiss for lack of personal jurisdiction by defendants DuBois and Smith will be denied.

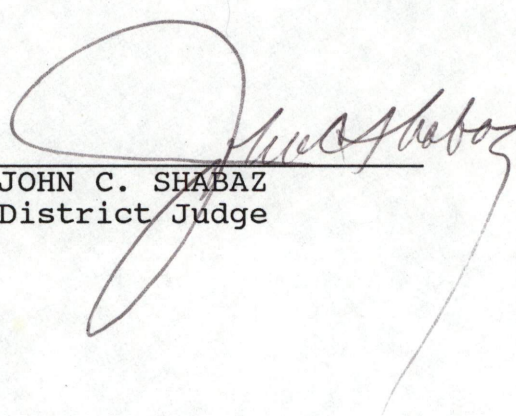
ORDER

IT IS ORDERED that the defendants' motion to dismiss plaintiff's complaint is DENIED.

IT IS FURTHER ORDERED that the motion to dismiss by defendants DuBois and Smith for lack of proper service and lack of personal jurisdiction is DENIED.

Entered this 9th day of January, 1992.

BY THE COURT:



JOHN C. SHABAZ
District Judge