

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

LASHAWN T. LOGAN,

Plaintiff,

v.

Unit Manager BRAD HOMPE; MR. BOUGHTON,
the S.D.; LT. LINEJER, the Supervisor; Unit Manager
BRIAN KOOL; DR. APPLE; and G. BERGE, Warden,

Defendants.

ORDER

01-C-371-C

In an order entered on September 20, 2001, I granted plaintiff LaShawn T. Logan leave to proceed on his Eighth Amendment inadequate medical and mental health care claims and on his conditions of confinement claim, including low temperatures and lack of clothing. At the same time, I stayed the proceedings relating to the merits of these claims until this court ruled on the constitutionality of the conditions of confinement at Supermax in Jones 'El v. Berge, No. 00-C-421-C, and I dismissed plaintiff's claims that he had been denied due process. Separately, on March 28, 2002, this court approved the settlement in the Jones 'El class action lawsuit.

Because the Jones 'El lawsuit has been resolved, I will lift the stay with respect to

plaintiff's Eighth Amendment claim that he was denied adequate medical and mental health care and his conditions of confinement claim as it relates to the lack of clothing, food and water. Because the settlement in Jones 'E1 did not resolve the issue of liability on these claims, it is necessary to reconsider whether plaintiff has alleged facts in this lawsuit sufficient to make out independent claims of constitutional violations. Plaintiff will be allowed to proceed on his Eighth Amendment inadequate mental health care claim against defendants Berge, Apple and Linejer and on his Eighth Amendment cruel and unusual punishment claim relating to the lack of clothing, bedding, food and water against defendant Kool. Plaintiff will not be allowed to proceed on his claim that he was denied medical care in violation of the Eighth Amendment.

ALLEGATIONS OF FACT

On April 4, 2001, defendant Linejer placed plaintiff on "control segregation" for taking off his restraint belt and writing on the back of his cell door. After 48 hours of good behavior by plaintiff, defendant Linejer took him off control segregation. Defendant Hompe then told defendant Kool to place plaintiff on unit A's "special management program" for a minimum of 28 days. This program is designed for inmates who abuse their property and vandalize state property repeatedly.

Defendant Kool placed plaintiff in a cell, completely naked, without his property for

28 days. The cell was “very, very cold” and plaintiff “almost froze to death.” Plaintiff asked defendant Kool many times for clothing but did not receive any. Because plaintiff had to sleep on the floor, he developed a very bad rash. During this time, plaintiff needed medical services but received none.

On June 4, 2001, plaintiff was placed on observation for three days. Psychologists put inmates on observation when they try to hurt themselves. Defendant Apple let Wilmot, a crisis intervention worker assigned to the alpha unit, put plaintiff on observation “butt naked,” with no food, water, clothing or bedding for three days. It was only 70 degrees in the cell. Wilmot refused to call a psychologist for plaintiff although he was experiencing mental health problems. Plaintiff was hurt badly from not eating. Staff did not let plaintiff eat because he had had two medicine cups in his room.

On June 5, 2001, plaintiff asked Sergeant Liefler to send someone to see him because he needed mental health treatment. Plaintiff is taking Prozac and Relling for depression and Tresidon for sleeping problems and these medications “muss with [his] mind really bad.” Three weeks earlier, plaintiff had put in a request to be seen by defendant Apple, a psychologist, and plaintiff had not yet been examined. Liefler responded to plaintiff’s request by saying “hell no suffer and wait [until] they come.” No one ever came to provide plaintiff with mental health care.

When plaintiff asked correctional officers Lange and Esser for help, they put a big fan

by plaintiff's door so that he could not call for medical help. They told him "fuck [you] go to hell" because he needed mental health treatment. They also turned on the "big" light all day and all night in plaintiff's cell; he could not sleep at all. Correctional officer Lange slammed plaintiff's security window very hard and locked his outside window so that plaintiff could not call for medical treatment or a psychologist. Plaintiff kicked the door twice to call for help. Still no one came to see him.

Wilmot knows that plaintiff needs mental health care badly but she will not tell a psychologist to visit plaintiff. They want plaintiff to say that he is going to kill himself before they will send a psychologist to see him. Plaintiff does not want to say this because if he does, they will take all of his clothing and put him in a cell completely naked for three or four days, during which time he would be cold.

Defendant Apple, the psychologist, did not see plaintiff very often while he was taking the strong medications. Every time plaintiff files a request to clinical services, it takes defendant Apple two or three weeks to see him.

DISCUSSION

A. Inadequate Medical and Mental Health Care

Plaintiff alleges that defendants Berge, Apple and Linejer violated his right to adequate medical and mental health care. Defendant Apple does not respond to plaintiff's

requests for psychiatric help in a timely manner: he has had to wait at least three weeks on more than one occasion. In addition, defendants Berge, Apple and Linejer failed to provide him with adequate medical and mental health care during his 28 days in the “special management program” and his three days on observation.

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. Detella , 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. The Court of Appeals for the Seventh Circuit has held that serious medical needs encompass not only conditions that are life-threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. See Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997).

1. Mental health care

As for petitioner’s inadequate mental health care claim, I find that petitioner’s allegations state a claim that defendants Berge, Apple and Linejer were deliberately indifferent to his serious mental health care needs by failing to provide him with adequate

mental health care during his time in the “special management program” and in observation and that defendant Apple was deliberately indifferent to his mental health care needs by failing to respond to his requests for psychiatric help in a timely manner.

2. Medical care in general

In contrast to his mental health care claim, petitioner fails to state a claim that defendants were deliberately indifferent to any of his non-mental health care claims. Petitioner fails to allege any serious medical need. Further, he fails to allege how defendants might have been indifferent to those unnamed needs, other than to state in a conclusory manner that defendants did not provide him with medical care during his time in the “special management program” and in observation. This silence suggests that petitioner is not alleging that defendants failed to afford him medical care other than mental health care and it does not give defendants notice of such a claim, even under the liberal pleading requirements of Fed. R. Civ. P. 8. Because nothing in petitioner’s allegations allows me to infer that he was denied adequate medical care separate from mental health care, petitioner will be denied leave to proceed on this portion of his adequate medical care claim for failure to state a claim upon which relief can be granted.

B. Conditions of Confinement

I understand plaintiff to contend that defendant Kool violated his rights under the Eighth Amendment by subjecting him to cruel and unusual conditions of confinement under the “special management program” and in observation status.

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Because the Eighth Amendment draws its meaning from evolving standards of decency in a maturing society, there is no fixed standard to determine when conditions are cruel and unusual. Id. at 346.

Plaintiff alleges facts sufficient to state a claim that defendant Kool violated his rights under the Eighth Amendment to be free from cruel and unusual punishment by depriving him of all clothing and bedding for 28 days while he was in the “special management program” and by depriving him of all food, water, clothing and bedding for three days while he was on observation.

ORDER

IT IS ORDERED that

1. The stay on this case is LIFTED;

2. Plaintiff Lashawn T. Logan is allowed to proceed on his Eighth Amendment inadequate mental health care claim against defendants Berge, Apple and Linejer and on his Eighth Amendment cruel and unusual punishment claim relating to the lack of clothing, bedding, food and water against defendant Kool;

3. Plaintiff will not be allowed to proceed on his Eighth Amendment inadequate medical care claim as it relates to medical care other than mental health care; and

4. Defendants Brad Hompe and Mr. Boughton are DISMISSED from this case.

Entered this 19th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge