

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

WILLIAM SCOTT SELDEN,

Petitioner,

v.

ORDER

03-C-332-C

SHERIFF DENNIS HILLSTEAD,
DEPUTY CARMEN HANSEN, CAPT.
KAREN HUMPHRIES, NURSE SUE LINDBERG
and ST. CROIX COUNTY JAIL,

Respondents.

This is a proposed civil action for monetary and injunctive relief, brought pursuant to 42 U.S.C. § 1983. William Scott Selden, who is currently confined at St. Croix County jail in Hudson, Wisconsin, requests leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915. He alleges that respondents violated his Eighth Amendment right to receive adequate medical care when they gave him medication that required him to be hospitalized.

From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if, on three or more previous occasions, the prisoner has had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief.

I conclude that petitioner has stated a claim upon which relief may be granted. If petitioner can prove that respondents knew of or recklessly disregarded an excessive risk to his health or safety, they may have violated his Eighth Amendment rights.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner William Scott Selden is an inmate at the St. Croix County jail in Hudson, Wisconsin. He takes high blood pressure medicine. On February 19, 2003, petitioner was given another inmate's medication instead of his own. When petitioner had an allergic reaction to the medication and his blood pressure began to rise dramatically, he was taken to the hospital and given morphine.

One month later, petitioner was still experiencing chest pain and he was taken back

to the hospital for a CT scan. The doctor told petitioner that “everything looked good.” However, petitioner continues to have chest pains and trouble urinating. Petitioner is being made to pay for his medical care.

DISCUSSION

I understand petitioner to allege that respondents violated his Eighth Amendment rights when they administered the wrong medication to him. 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. Therefore, petitioner must allege facts from which it can be inferred that he had a serious medical need and that prison officials were deliberately indifferent to this need. See Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

High blood pressure requiring hospitalization constitutes a serious medical need. However, to prevail on a claim that respondents acted with deliberate indifference to his health, petitioner must demonstrate that respondents were “aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]” and that they

actually drew the inference. Farmer, 511 U.S. at 837. Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. Deliberate indifference in the denial or delay of medical care is evidenced by a defendant's actual intent or reckless disregard. Reckless disregard is characterized by highly unreasonable conduct or a gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. See Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985).

Thus, if respondents simply made a mistake in administering the wrong medication to petitioner, there is no Eighth Amendment violation, even though the consequences of that mistake were very serious. However, if respondents gave petitioner the wrong medication *knowing* that it was not his medication and *knowing* or *recklessly disregarding* the risk that the medication would cause him serious harm, then they may have violated the Eighth Amendment. I am doubtful that petitioner can prove such a claim, particularly because petitioner alleges that he was taken to the hospital as soon as the risk to his health became apparent. However, at this stage of the litigation, I cannot say that there is no set of facts consistent with petitioner's allegations that would entitle him to relief. Therefore, I will allow him to proceed on this claim.

In the body of his complaint, petitioner does not identify *who* was involved in giving

him the wrong medication. To establish liability, petitioner must show that each respondent was personally involved in the unconstitutional behavior, meaning that they participated in, directed or consented to the conduct. Rasche v. Village of Beecher, 336 F.3d 588, 597 (7th Cir. 2003). An individual cannot be held liable under § 1983 simply because he or she is the supervisor of someone who engaged in unconstitutional conduct. Perkins v. Lawson, 312 F.3d 872 (7th Cir. 2002). Again, I will presume at this stage that each of the individual defendants was personally involved, although it seems highly unlikely that so many individuals would be involved in a decision regarding one dose of medication. With respect to respondent St. Croix County jail, however, this is a physical structure and cannot be sued. It is incapable of accepting service of petitioner's complaint or responding to it. Therefore, respondent "St. Croix County jail" will be dismissed.

ORDER

IT IS ORDERED that

1. Petitioner William Scott Selden's request for leave to proceed in forma pauperis is GRANTED on his claim that respondents Dennis Hillstead, Carmen Hansen, Karen Humphries and Sue Lindberg violated his Eighth Amendment right to receive adequate medical treatment when they gave him the wrong medication.

2. Respondent "St. Croix County jail" is DISMISSED from this case.

3. The unpaid balance of petitioner's filing fee is \$142.33; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

4. The clerk of court is requested to arrange for service on respondents Dennis Hillstead, Carmen Hansen, Karen Humphries and Sue Lindberg at the St. Croix County jail.

5. Petitioner should be aware of the requirement that he send respondents a copy of every paper or document that he files with the court. Once petitioner has learned the identity of the lawyer who will be representing respondents, he should serve the lawyer directly rather than respondents. Petitioner should keep a copy of all documents for his own files. The court will disregard any papers or documents submitted by petitioner unless the court's copy shows that a copy has gone to respondents or to respondents' attorney.

Entered this 26th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge