

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

DANIEL J. HARPER,

Petitioner,

v.

SERGEANT LAUFENBERG,

Respondent.

ORDER

04-C-699-C

This is a proposed civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Green Bay Correctional Institution in Winnebago, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. 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 the prisoner has had three or more lawsuits or appeals 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 asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Daniel Harper is an inmate at the Green Bay Correctional Institution in Winnebago, Wisconsin. Petitioner is mentally ill and suffers from a depression disorder and an intermittent explosive disorder. Respondent Laufenberg is a sergeant at the Green Bay Correctional Institution.

On January 10, 2003, petitioner told respondent that he felt like killing himself. Rather than placing petitioner under observation, respondent persuaded petitioner to stab himself in the right area of his right arm. In addition, respondent encouraged petitioner to

tie a sheet around his neck and attempt to take his own life. Respondent was aware of petitioner's mental illness. Two other inmates observed respondent's conduct.

DISCUSSION

The Eighth Amendment prohibits prison staff from being deliberately indifferent to an inmate's risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 834 (1994). To prevail on a deliberate indifference claim under the Eighth Amendment, a prisoner must produce evidence that satisfies two elements. First, the danger to the inmate must be objectively serious. Farmer, 511 U.S. at 834; Sherrod v. Lingle, 223 F.3d 605, 610 (7th Cir. 2000). For the subjective prong, the defendants must have acted with deliberate indifference. Farmer, 511 U.S. at 838. The Supreme Court has held that the subjective component of deliberate indifference requires that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. It is not enough that he "should have known" of the risk. Rather, the official must know there is a risk and consciously disregard it. Higgins v. Correctional Medical Services of Illinois, 178 F.3d 508, 511 (7th Cir. 1999).

At this stage of the proceedings, petitioner has alleged sufficient facts to state a claim under the Eighth Amendment. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (Federal Rule of Civil Procedure 8 requires only enough notice so that the party can file an answer).

Encouraging an inmate to perform actions that could help him commit suicide presents an objectively serious risk to the inmate. Furthermore, petitioner alleges that respondent knew that petitioner suffered from mental illness and that he entertained thoughts of suicide. Petitioner's allegations would allow the drawing of an inference that respondent Laufenberg knew that his alleged actions would subject petitioner to a substantial risk of harm. However, for petitioner to succeed on his Eighth Amendment claim against respondent Laufenberg, he must produce admissible evidence showing that Laufenberg acted in the manner that petitioner claims and that Laufenberg knew that his actions would create a substantial risk of serious harm to petitioner. With that in mind, petitioner will be allowed leave to proceed in forma pauperis on his Eighth Amendment claim against respondent Laufenberg.

ORDER

IT IS ORDERED that petitioner Daniel J. Harper's request for leave to proceed in forma pauperis is GRANTED on his claim that respondent Sergeant Laufenberg violated his Eighth Amendment rights when Laufenberg failed to place petitioner under observation status and instead encouraged petitioner to stab himself and tie a sheet around his neck to help petitioner attempt to commit suicide.

- For the remainder of this lawsuit, petitioner must send respondent a copy of

every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is \$144.59; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).
- Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants.
- Petitioner submitted documentation of exhaustion of administrative remedies with his complaint. Those papers are not considered to be a part of

petitioner's complaint. However, they are being held in the file of this case in the event respondent wishes to examine them.

Entered this 15th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge