

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

JOHN ERIC SANDLES,

Plaintiff,

v.

MEMORANDUM and ORDER

TRACI RIBUTZ, NURSE DUSTIN,
NURSE JENN, NURSE LIZ, NURSE VIKKI
and SHERIFF OF DANE COUNTY,

06-C-211-S

Defendants.

Plaintiff John Eric Sandles was allowed to proceed on his claims that he was denied prescription medication and a religious diet and that he was punished without due process. Only defendants Traci Ributz and the Sheriff of Dane County were served with the summons and complaint in this case.

On February 5, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff John Eric Sandles is currently an inmate at the USP Victorville, Adelanto, California. He was a federal prisoner house at the Dane County Jail from April 15, 2004 to April 26, 2004.

Dane County is a municipal corporation. Defendant Sheriff of Dane County is being sued in his official capacity as the person responsible for maintaining the jail. Defendant Traci Ributz (Roberts) is a Classification and Hearing Specialist at the Dane County Jail.

Dane County has a contract with a private corporations, Prison Health Services, Inc., to provide medical care for inmates at the jail. Medical staff at the jail are employed by Prison Health Services, Inc., and not the jail. Plaintiff arrived at the jail

with a Health Transfer Summary from the Federal Correctional Institution at Oxford. Although Sandles arrived at the jail with medication, his health transfer summary did not refer to any need for medication. Jail policy required that the staff take possession of any medication that inmates bring with them. Plaintiff's pain medication which was to be taken on an as needed basis was given to him after approval by the jail doctor on April 19, 2004.

On April 15, 2004 plaintiff was accused of smoking tobacco. Defendant Roberts prepared a document entitled "Notice of Disciplinary Hearing and Rights". This document was served on plaintiff on April 19, 2004 and informed him of the charges against him and the possible penalties. On April 20, 2004 plaintiff signed a form waiving his rights to a formal hearing.

In an informal hearing defendant Roberts found plaintiff guilty of violating jail rules, not following staff directions, violating a county ordinance and possessing contraband. He was given a penalty of 15 days lockdown.

Inmates at the Dane County Jail may request a vegetarian or vegan diet from the chaplain for religious reason or from a supervisor for non-religious reasons. There is no evidence that plaintiff ever requested a vegetarian diet from the chaplain or a supervisor.

MEMORANDUM

Plaintiff was allowed to proceed on his claims that he was denied prescription medication and a religious diet and that he was punished without due process. Defendants move for summary judgment on these claims. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

In Wolff v. McDonnell, 418 U.S. 539, 563-67 (1974), the United States Supreme Court held that a prisoner is entitled to advance written notice of the disciplinary charges, an opportunity to call witnesses and present documentary evidence in his defense, the aid of a staff member and a written statement by the fact finder of the evidence relied upon and the reasons for the disciplinary action. An inmate may waive these rights. United States ex rel. Williams v. DeRobertis, 715 F.2d 1174, 1178 (7th Cir. 1983).

Plaintiff received a notice of the charges against him and notice of a formal hearing. He signed a waiver form waiving his right to a formal hearing and was provided an informal hearing at which he was found guilty of the charges against him. Plaintiff received all the process to which he was due. Defendants are entitled to judgment as a matter of law on this claim.

Plaintiff also claims he was denied his prescription medication. Allegations of deliberate indifference to an inmate's serious medical need state a cause of action under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 997 (1976). Deliberate

indifference exists when an official knows of and disregards a serious medical condition and the official is "aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference"> Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Plaintiff arrived at the Dane County Jail with medication but with no explanation from the previous institution as to why plaintiff was taking the medication. The medication was taken from plaintiff. After it was approved by the jail doctor on April 19, 2004 plaintiff was provided this medication on an as need basis. Plaintiff has provided no evidence from which the Court can conclude that any Dane County Jail personnel were deliberately indifferent to his serious medical need. Defendants are entitled to summary judgment on this claim.

Plaintiff claims that he was denied a religious diet for the eleven days he was at Dane County Jail. He has presented no evidence that he requested such a diet from the chaplain or the supervisor. Accordingly, defendants are entitled to judgment as a matter of law on this claim.

Since plaintiff was allowed to proceed only on these three claims, the Court need not address the merits of any other claims. Defendants' motion for summary judgment will be granted.

Attached to plaintiff's opposition brief is a motion to amend his complaint to add Michelle Vick as a defendant concerning his due process claim. Since this claim has been dismissed plaintiff's motion to amend his complaint will be denied as moot.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion to amend his complaint is DENIED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 6th day of March, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge