

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

JAMES A. SMITH,

Plaintiff,

v.

MEMORANDUM AND ORDER

MATTHEW J. FRANK
and GREG D. GRAMS,

07-C-280-S

Defendants.

Plaintiff James A. Smith was allowed to proceed on his Eighth Amendment claims against defendants Matthew J. Frank and Greg D. Grams that he was deprived of medical treatment which placed him at risk for serious physical injury.

On June 25, 2007 defendants moved to dismiss plaintiff's complaint for failure to state a claim for lack of personal involvement of the defendants. Pursuant to this Court's June 28, 2007 scheduling order plaintiff's response to this motion was to be filed not later than July 16, 2007 and has not been filed to date.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6)

a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For the purposes of deciding the defendants' motion to dismiss the facts alleged in plaintiff's complaint are taken as true.

Plaintiff James A. Smith is an adult inmate at the Columbia Correctional Institution, Portage, Wisconsin. (CCI). Defendant Matthew J. Frank is the Secretary of the Wisconsin Department of Corrections. Defendant Greg D. Grams is the warden at CCI.

Plaintiff alleges that in 1998 he was injured and that he has not received adequate medical care in prison.

MEMORANDUM

Plaintiff claims that his Eighth Amendment rights were violated because he has not received adequate medical care. The Eighth Amendment prohibits the deliberate indifference by prison officials to an inmate's serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976). A mere disagreement over the quality of medical treatment does not rise to the level of an Eighth Amendment violation. Id. Plaintiff's allegations do not support an Eighth Amendment violation.

Further, plaintiff does not allege that either Matthew Frank or Greg Grams personally denied him medical treatment. An

individual cannot be held liable under 42 U.S.C. § 1983 unless he caused or participated in the alleged deprivation of constitutional rights. Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). Plaintiff has not made allegations that support a conclusion that either defendant caused or participated in violating his Eighth Amendment rights.

Defendants motion to dismiss plaintiff's complaint for failure to state a claim and for failure to allege the personal involvement of the defendants will be granted.

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 claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

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

IT IS FURTHER ORDERED that judgment be entered DISMISSING plaintiff's complaint and all claims contained therein with prejudice.

Entered this 25th day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge