IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LEIGHTON D. LINDSEY,

Plaintiff, ORDER

v. 10-cv-385-bbc

DYLON RADTKE, Captain SALTZER,
RYAN ARMSON, JOSEPH CHICANOWICZ,
NURSE JOHN DOE, NURSE JANE DOE,
DOCTOR JOHN DOE and OFFICER JOHN DOE,[1]

Defendants.

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In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Leighton Lindsey contends that several correctional officers and prison staff members at the Columbia Correctional Institution violated his constitutional rights. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment. On August 19, 2010, I told plaintiff that his proposed complaint included as many as seven separate lawsuits and therefore violated Fed. R. Civ. P. 20. I gave plaintiff an opportunity to identify which lawsuits he wishes to pursue under this case number. Plaintiff has responded,

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[1] I have amended the caption to reflect the defendants named in plaintiff's amended complaint.

indicating that he wishes to proceed on lawsuit numbers 3 and 4 and dismiss lawsuit numbers 1, 2, 5, 6, and 7 as well as several defendants, including Joanne Lane, Paul Ketorkus, James Kuptke, Gregory Trattles, Ryan Tabiasz, Correctional Officer Frans, Katrina Davison, Brian Neumaier, Patrick Hooper and Warden Greg Grams. However, plaintiff has also filed an amended complaint, stating that he wants the court to discard his original complaint and screen the amended one. His amended complaint makes it clear that combining lawsuits 3 and 4 will not pose Rule 20 problems because they involve related events. Therefore, I will screen plaintiff's amended complaint under 28 U.S.C. 1915A and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). After reviewing plaintiff's amended complaint, I conclude that plaintiff may proceed on his claims that defendants Armson, Chicanowicz and Saltzer used excessive force against him and defendant Radtke exhibited deliberate indifference to his medical needs, in violation of the Eighth Amendment. However, plaintiff may not proceed on his claims against Nurse Jane Doe, Nurse John Doe, Doctor John Doe and Officer John Doe because he has failed to state a claim against these defendants. They will be dismissed from the case.

In plaintiff's amended complaint, he alleges the following facts.

ALLEGATIONS OF FACT

A. The Parties

Plaintiff Leighton Dwight Lindsey is an inmate at the Wisconsin Secure Program Facility (WSPF) in Boscobel, Wisconsin. Before his transfer to WSPF, plaintiff was incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. Defendants Ryan Armson, Joseph Chicanowicz, Dylon Radtke and Captain Saltzer are correctional officers at the Columbia Correctional Institution. Defendants Nurse John Doe, Nurse Jane Doe, Doctor John Doe and Officer John Doe also work at the institution.

B. January 28, 2010 Incident

Sometime before January 28, 2010, plaintiff received a conduct report for exposing himself to correctional officer Connie Wasson. On January 28, 2010, plaintiff was receiving a haircut in the segregation kitchen area and began staring at Wasson. Defendants Ryan Armson and Joseph Chicanowicz were watching plaintiff stare at Wasson. When Armson and Chicanowicz were transporting plaintiff back to his cell after his haircut, Chicanowicz told plaintiff that "if [he] wanted [his] eyes [he] better not look at [Wasson]." Plaintiff responded and Chicanowicz shoved plaintiff into Armson, who told plaintiff to "stop resisting." Chicanowicz and Armson then pushed plaintiff into the wall and slammed his head against the wall. Defendants threw plaintiff down the stairs, banged his head against the floor, attempted to break his wrist and kneed him. Defendants caused cuts and consequent swelling on plaintiff's knees and wrists and caused injuries to plaintiff's neck, head, back and abdomen.

Defendant Captain Saltzer and other guards arrived on the scene, and plaintiff asked Saltzer whether different guards could transport him. Saltzer directed defendants Armson and Chicanowicz to take plaintiff to the kitchen, where a nurse could check his injuries. Plaintiff complained again that Armson and Chicanowicz should not be escorting him because they were the cause of his injuries. In response to plaintiff's complaints, Captain Saltzer told Armson and Chicanowicz to "take [plaintiff] down." Defendants threw plaintiff to the floor, kneed his abdomen and smashed his head into the floor.

C. Medical Care

Between January 30, 2010 and February 24, 2010, plaintiff sought medical treatment for his knee from the health services unit. His knee was painful and swollen from the incident with defendants Armson, Chicanowicz and Saltzer. Although he was scheduled for appointments in response to his requests, he was never taken to any. On February 24, 2010, plaintiff showed his swollen knee to defendant Dylon Radtke, who is the captain of the segregation unit. Plaintiff told Radtke that he was in pain and needed medical attention and that although he had written numerous requests to the health services unit, he had not been seen. Radtke told plaintiff that medical "was not his area," and told plaintiff to file a health service request.

DISCUSSION

A. Excessive Force

Plaintiff's first claim is that defendants Ryan Armson and Joseph Chicanowicz used excessive force against him in violation of the Eighth Amendment and defendant Saltzer failed to intervene. To state a claim of excessive force against a prison official, a plaintiff must allege that the official applied force "maliciously and sadistically for the very purpose of causing harm," rather than "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The factors relevant to this determination include such matters as why force was needed, how much force was used, the extent of the injury inflicted, whether defendant perceived a threat to the safety

of staff and prisoners and whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321.

Plaintiff contends that defendants Armson and Chicanowicz used an excessive amount of physical force against him because he was staring at another officer and later, because he requested that different officers transport him. Plaintiff alleges that defendants pushed him to the floor, kneed him and slammed his head into the floor until he sustained abdominal, back, knee and head injuries. Plaintiff's allegations do not suggest that plaintiff posed a serious risk of danger to defendants when they injured him or that defendants tempered the severity of the force employed. If plaintiff's allegations are true, he may be able to prove that Armson and Chicanowicz applied force for the sole purpose of harming him. Accordingly, I will allow plaintiff to proceed on his claim that Armson and Chicanowicz used excessive physical force in violation of the Eighth Amendment.

To prevail on a claim against defendant Saltzer for failing to stop Armson's and Chicanowicz's assault against plaintiff, plaintiff will have to prove that Saltzer failed to stop them from using excessive force despite a realistic opportunity to do so. Lewis v. Downey, 581 F.3d 467, 472 (7th Cir. 2009). Plaintiff alleges that Saltzer directed the officers to "take [plaintiff] down" and then did nothing to stop the officers from assaulting plaintiff. If these allegations are true, plaintiff may be able to prove that Saltzer encouraged Armson and Chicanowicz to use excessive force on plaintiff and had an opportunity to stop them from using excessive force but chose not to act. Thus, plaintiff may proceed on his claim against Saltzer.

B. Medical Care

Plaintiff contends that defendants Radtke, Nurse Jane Doe, Nurse John Doe, Officer John Doe and Doctor John Doe were deliberately indifferent to his medical needs in violation of the Eighth Amendment. Prison officials have a duty under the Eighth Amendment to provide medical care to those being punished by incarceration. Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner 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. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risk of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (1994).

"Deliberate indifference" means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). Thus, under this standard, plaintiff's claim has three elements:

(1) Did plaintiff need medical treatment?

(2) Did defendant know that plaintiff needed treatment?

(3) Despite defendant's awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

Plaintiff alleges that his knee was swollen and very painful. At this stage, I can infer that plaintiff's knee injury qualified as a serious medical need. Plaintiff alleges that he showed his swollen knee to defendant Radtke and told Radtke that he was in pain and needed medical treatment. According to plaintiff, Radtke, who is responsible for the inmates in the segregation unit, essentially ignored plaintiff's request for help. Thus, I can infer that Radtke knew plaintiff needed medical treatment and failed to take reasonable measures to provide treatment. Plaintiff may proceed with his Eighth Amendment deliberate indifference claim against defendant Radtke.

However, plaintiff's complaint contains no allegations from which I could infer that Nurse Jane Doe, Nurse John Doe, Doctor John Doe or Officer John Doe were involved in plaintiff's medical care or why they should be liable for a constitutional violation. It is well established that liability under § 1983 must be based on a defendant's personal involvement in the constitutional violation. Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). Because plaintiff's complaint makes no mention of these defendants, plaintiff may not proceed on his claims against them and they will be dismissed from the case.

ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey's amended complaint is accepted as the operative pleading in this case. Defendants Joanne Lane, Paul Ketorkus, James Kuptke, Gregory Trattles, Ryan Tabiasz, Correctional Officer Frans, Katrina Davison, Brian Neumaier, Patrick Hooper and Warden Greg Grams are DISMISSED from this case.

2. Plaintiff Leighton Lindsey is DENIED leave to proceed on his claims against defendants Nurse John Doe, Nurse Jane Doe, Doctor John Doe and Officer John Doe. Plaintiff's complaint is DISMISSED as to these defendants.

3. Plaintiff is GRANTED leave to proceed on the following claims:

(a) Defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz violated plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment by using excessive force against him; and

(b) Defendant Dylon Radtke violated plaintiff's right to adequate medical treatment under the Eighth Amendment by exhibiting deliberate indifference to his serious medical need.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's amended complaint, dkt. ##12, 13, and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint for the defendants on

whose behalf it accepts service.

5. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 7th day of September, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge