IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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SHAUN MATZ,

Plaintiff,

v.

RICHARD RAEMISCH, GREGORY GRAMS, JANEL NICKEL, DR. MARTHA BREEN, DR. VANDENBROOK, DR. KURT SCHWEBKE, DR. NELSON, CPT. SEAN SALTER, LT. LANE, LINDA FAIT, C.O. TRAVIS BITTLEMAN, C.O. VASOS, C.O B. NEUMAIER, JEFF HEISE and JOHN AND JANE DOES 1 THRU 6,

Defendants.

OPINION and ORDER

10-cv-668-slc[1]

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Plaintiff Shaun Matz has filed a proposed amended complaint and an affidavit in response to this court's November 16, 2010 order in which I concluded that his original complaint violated Federal Rules of Civil Procedure 8 and 20. In the same order, I questioned whether it was plaintiff's intention to file a lawsuit because his complaint was prepared by another prisoner. I instructed plaintiff to submit an affidavit demonstrating that

[1] I assuming jurisdiction over this case for the purpose of this order.

he wishes to proceed with the case and that the allegations in the amended complaint reflect his actual experiences in prison. Plaintiff has filed an affidavit that complies with the order and an amended complaint that complies with the federal rules.

Plaintiff's new complaint drops various defendants that were included in his original complaint: Richard Raemisch, Gregory Grams, Janel Nickel, Martha Breen, Jeff Heise and "John and Jane Does 1 thru 6." Those defendants will be dismissed from the complaint without prejudice to plaintiff's pursuing claims against them at a later date. In addition, plaintiff has changed the name of "Travis Bittleman" is his original complaint to "Travis Biddleman" in his amended complaint and he has dropped the first names of several defendants and replaced them with titles. Because the amended complaint is the operative pleading, I will use the names plaintiff uses in the amended complaint throughout the opinion.

Because plaintiff is prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail 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. 28 U.S.C. §§ 1915 and 1915A. Having reviewed the complaint, I conclude that plaintiff has stated a claim upon which relief may be granted with respect to the following claims under the Eighth Amendment: (1) defendants Vandenbrook, Biddleman, Vasos, Neumaier, Schwebke and Nelson knew that

plaintiff was feeling suicidal, but failed to take any steps to help him; (2) defendants Lane and Fait transferred plaintiff to the Green Bay Correctional Institution, even though they knew that he would harm himself if transferred there; and (3) defendants Lane and Salter placed him in segregation for 240 days for harming himself, even though a psychologist testified that plaintiff was mentally ill.

Accompanying plaintiff's amended complaint is a renewed motion for appointment of counsel. I will consider that motion in a separate order.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

At the times relevant to this case, plaintiff Shaun Matz was incarcerated at the Columbia Correctional Institution in Portage, Wisconsin, unless otherwise specified. He suffers from various mental illnesses, including major depression. Past diagnoses include schizoaffective disorder, adjustment disorder and explosive disorder. He has been admitted to "mental health institutions" at least three times and has attempted suicide "many" times while incarcerated.

A. First Act of Self Harm

On August 29, 2007, plaintiff told defendant Michael Vandenbrook, a psychologist who works at the prison, that he was depressed and that he believed he would hurt himself if he was not placed on observation status. Defendant Vandenbrook said, "No, don't do that," then laughed and walked away. Vandenbrook is "fully aware" of plaintiff's "long history of self harm and suicid[e] attempts."

During the next shift, plaintiff told defendant Travis Biddleman, a correctional officer, that he was going to hurt himself. Biddleman told plaintiff that he was "busy with showers at the moment" and to "just try to be calm." Biddleman told no one about what plaintiff said and did not help him.

At meal time, plaintiff "pleaded with" defendant Vasos, a correctional officer, to place him in observation status "so that he could be protected from himself." Vasos told plaintiff, "the only way you can go to observation is if you hurt yourself." Plaintiff "became so depressed and hopeless" that he cut himself with a piece of metal. When plaintiff began to "bleed profusely," other prisoners began calling the guards for help. Defendants Biddleman and Vasos did not come to help right away, but instead closed the door at the end of the tier. After other prisoners began kicking their cell doors, Biddleman came to plaintiff's cell. Plaintiff's wounds were so severe that he had to be taken to the hospital, where he received stitches.

B. Second Act of Self Harm

On July 2, 2009, plaintiff asked defendant Neumaier to contact a psychologist. When Neumaier asked whether plaintiff believed he was going to hurt himself, plaintiff said "Yes." Neumaier walked away and did not contact a psychologist or take any other action to help plaintiff. Neumaier was "fully aware" of plaintiff's "self harm and suicidal history."

Plaintiff waited for approximately one hour. When he "could not take it any longer," he began cutting his arm, "spraying blood all over the cell." Again, plaintiff was taken to the hospital for treatment.

C. Third Act of Self Harm

On July 3, 2009, plaintiff was in observation status. He asked defendant Schwebke, a psychologist at the prison, to strap him down because he was still feeling suicidal. Schwebke told plaintiff, "we don't strap down inmates just because they request it." Plaintiff told Schwebke that he would kill himself if he was not strapped down. Schwebke walked away. Schwebke was "fully aware" of plaintiff's "self harm and suicidal history."

The following day plaintiff told defendant Nelson, a psychologist at the prison, that he "was not feeling safe and intended to kill himself." Nelson said, "We believe you when you say that. We just wish there was something we could do for you." Nelson did not strap

plaintiff down or take any other steps to help plaintiff. Nelson was "fully aware" of plaintiff's "self harm and suicidal history."

That night, plaintiff attempted to commit suicide by cutting his arm. Plaintiff was taken to the hospital for medical treatment.

D. Disciplinary Proceedings

On July 2, 2009, plaintiff received a conduct report for cutting himself. At his hearing, Dr. Tobiez, a psychologist, testified that plaintiff "was not in his right mind at the time when he cut himself" and that he had "disassociated from reality." Nevertheless, defendants Lane and Captain Salter found plaintiff guilty and imposed a sentence of 240 days in segregation, stating that plaintiff "showed a total lack of remorse for what he had done." Being placed in segregation deepened plaintiff's depression and suicidal thoughts.

E. Transfer to Green Bay

Plaintiff had a hearing before the program review committee to determine his placement. He told defendants Linda Fait and Lt. Lane, two members of the committee, that he would kill himself if they transferred him to the Green Bay Correctional Institution. Lane and Fait had "prior knowledge" of his "self-harm and suicidal history." Despite this

knowledge and plaintiff's statement, they recommended a transfer to the Green Bay prison.

After plaintiff was transferred, he "attempted to end his life by starvation." He did not eat for eight days and lost 18 pounds.

OPINION

Plaintiff's complaint has three groups of claims: (1) defendants Vandenbrook, Biddleman, Vasos, Neumaier, Schwebke and Nelson knew that plaintiff was feeling suicidal, but failed to take any steps to help him; (2) defendants Lane and Fait transferred plaintiff to the Green Bay Correctional Institution, even though he told them that he would kill himself if transferred there; and (3) defendants Lane and Salter placed him in segregation for 240 days for harming himself, even though a psychologist testified that plaintiff was mentally ill. Plaintiff contends that all of these actions violated his rights under the Eighth Amendment, which prohibits cruel and unusual punishment.

A. Failure to Prevent Acts of Self Harm

1. Defendants Vandenbrook, Biddleman, Vasos, Neumaier, Schwebke and Nelson

It is well established that prison officials have a duty to protect prisoners from harming themselves as a result of a mental illness. Minix v. Canarecci, 597 F.3d 824, 833 (7th Cir. 2010); Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The standard is whether a particular

official was aware of a substantial risk that the plaintiff would seriously harm himself, but disregarded that risk by failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825 (1994).

In this case, plaintiff alleges that he told defendants Vandenbrook, Biddleman, Vasos, Neumaier, Schwebke and Nelson on different occasions that he was feeling suicidal, but each of them failed to take any action before he cut himself and needed treatment at a hospital. These allegations are sufficient to state a claim upon which relief may be granted under the Eighth Amendment.

2. Defendants Lane and Fait

It is a closer call whether plaintiff states a claim against defendants Lane and Fait. Plaintiff did not tell those defendants he was feeling suicidal; he threatened to commit suicide if they transferred him to Green Bay. A prison official is not necessarily disregarding a substantial risk of serious harm simply by transferring a prisoner to an institution she believes is appropriate for his needs. Further, it is not clear whether plaintiff stopped eating because of feelings of depression or because he was protesting his transfer. If it was the latter, plaintiff may not be able to prevail on his claim because he would have complete control to stop the harm he was experiencing at any time. Freeman v. Berge, 441 F.3d 543, 546 (7th Cir. 2006) (no Eighth Amendment violation for food deprivation when prisoner

was denied food as consequence of his own actions); Rodriguez v. Briley, 403 F.3d 952 (7th Cir. 2005) (same).

At this early stage, I will assume that defendants Lane and Fait knew that Green Bay was not an appropriate placement for plaintiff and that they were aware of a substantial risk that the conditions at the prison would lead plaintiff to harm himself. In addition, I will assume that plaintiff was not simply trying to make a point by not eating, but was overwhelmed by despair because of the conditions at the Green Bay prison. Accordingly, I will allow him to proceed on this claim under the Eighth Amendment.

B. Discipline for Self Harm

Plaintiff's last claim raises a novel question: is it cruel and unusual punishment to discipline a prisoner for harming himself if the prisoner does so as a result of mental illness? This claim could implicate the Eighth Amendment in two ways. First, plaintiff may mean to contend that it violates the Eighth Amendment to punish someone for behavior he cannot control. Robinson v. California, 370 U.S. 660, 667 (1962) (concluding that statute criminalizing being "addicted to the use of narcotics" violated Eighth Amendment because it is "an illness which may be contracted innocently or involuntarily"); Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006) (statute prohibiting homeless people from sitting, lying or sleeping on public streets and sidewalks violates Eighth Amendment because

homeless people cannot avoid doing those things). Second, he may mean to contend that defendants disregarded his mental illness by placing him in segregation, which exacerbated his condition, rather than providing him mental health treatment. Gates v. Cook, 376 F.3d 323, 332 (5th Cir. 2004) (under Eighth Amendment, "mental health needs are no less serious than physical needs"); Jones 'El v. Berge, 164 F. Supp. 2d 1096, 1116 (W.D. Wis. 2001) (when conditions of confinement "are so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit," this may result in cruel and unusual punishment). Although the scope of either of these rights is unclear, I conclude that plaintiff has alleged enough facts to state a claim under both theories.

At summary judgment or trial, plaintiff will have to show with respect to the first claim not only that he could not control his actions, but that defendants Lane and Fait *knew* that he could not. Prison officials cannot be held liable under the Eighth Amendment for making a mistake, even one that demonstrates negligence. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996) ("[A] defendant's inadvertent error [or] negligence . . . is insufficient to rise to the level of an Eighth Amendment constitutional violation."); Wilson v. Seiter, 501 U.S. 294, 299-300 (1991) (Eighth Amendment "mandate[s] inquiry into a prison official's state of mind" because word "punishment" in amendment implies "intent requirement"). Further, defendants remain free to argue that the Eighth Amendment does not prohibit prison officials for punishing acts of self harm, even when they are caused by mental illness. With

respect to the second claim, plaintiff will have to show that defendants knew that placing him in segregation would exacerbate his mental illness and that there were other reasonable steps they could have taken to provide him treatment.

ORDER

IT IS ORDERED that

1. Plaintiff Shaun Matz is GRANTED leave to proceed on the following claims under the Eighth Amendment:

(a) in August 2007, defendants Michael Vandenbrook, Travis Biddleman and Vasos knew there was a substantial risk that plaintiff would seriously harm himself, but they failed to take reasonable steps to help him;

(b) on July 2, 2009, defendant Neumaier knew there was a substantial risk that plaintiff would seriously harm himself, but Neumaier failed to take reasonable steps to help him;

(c) on July 3, 2009, defendants Nelson and Schwebke knew there was a substantial risk that plaintiff would seriously harm himself, but they failed to take reasonable steps to help him;

(d) defendants Linda Fait and Lt. Lane recommended plaintiff for a transfer to Green Bay Correctional Institution, even though they knew that doing so would subject plaintiff

to a substantial risk of serious self harm;

(e) defendants Lane and Salter placed plaintiff in segregation for 240 days for harming himself, even though they knew that plaintiff was mentally ill and that placing him in segregation would exacerbate his mental illness.

2. Defendants Richard Raemisch, Gregory Grams, Janel Nickel, Martha Breen, Jeff Heise and "John and Jane Does 1 thru 6" are DISMISSED from the case without prejudice to plaintiff's pursuing a claim against them at a later date.

3. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the 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 if it accepts service for defendants.

Entered this 9th day of December, 2010.

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