

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

DAVID W. WATTS,

Plaintiff,

v.

DAN WESTFIELD and RICK RAEMISCH,

Defendants.

ORDER

10-cv-550-wmc

Following screening pursuant to 28 U.S.C. § 1915(e)(2), plaintiff David Watts was allowed to proceed in this case on his Eighth Amendment claims that defendants Dan Westfield and Rick Raemisch of the Wisconsin Department of Corrections failed to (1) protect him from harm at the Colorado prison to which he was transferred; and (2) provide him with a CPAP machine for his sleep apnea. On August 23, 2012, the court denied Watts' motion for a preliminary injunction, but provided him with an opportunity to supplement his complaint with specific facts supporting a claim that Westfield and Raemisch also failed to protect him from physical violence at the Dodge Correctional Institution ("DCI"), where he was transferred following his stint at the Colorado prison.¹

Watts having since submitted his supplement, the next step is to determine pursuant to § 1915(a)(2) whether Watts's additional claim (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. Because Watts clears this step for the

¹ Watts has since been transferred to the Columbia Correctional Institution.

reasons explained below, he will be allowed to amend his complaint to include that claim and a status conference will be set in order to establish a new schedule for resolving the case as a whole.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes these additional, probative facts based on the allegations in Watts's proposed supplement to his complaint:

- Plaintiff David Watts continues to be a prisoner incarcerated by the Wisconsin Department of Corrections.
- Watts was a confidential informant in a 2006 criminal case.
- "Defendants, their staff, and agents" told Watts that they would protect him before, during and after the criminal trial.
- Watts arrived at the Dodge Correctional Institution ("DCI") on August 2, 2011.
- Watts's court-appointed attorneys initially could not contact him. In order to protect his safety, counsel for defendants explained that prison staff were ordered to tell people attempting to contact Watts that they did not know where he was located. Also, counsel represented that defendants were looking for a "more suitable placement . . . out of state" and that he was not going to be put into the general population.
- In addition, prison staff told Watts that defendants told them "to keep an eye on" Watts and to report back to them about his safety.
- Watts was housed in DCI unit #20. Each prisoner's status is indicated by a magnetic sticker on the inmate's cell door.
- Watts did not have a sticker on his door, making inmate workers suspicious.

- The inmate workers asked staff about Watts's status, who told the workers that Watts was "a snitch and protective custody inmate."
- The inmate workers began to "intimidate, threaten and harass" Watts. Watts wrote to defendants and other prison officials about the harassment. Defendants did not respond.
- A couple of days later, Watts was attacked in the shower area, injuring his neck, back and head and leaving scrapes and bruises on his body. Watts wrote to defendants and other prison officials about the attack. Defendants did not respond.
- Watts was also beaten twice by Correctional Officer Thomas Jahnke. Watts wrote to defendants about these incidents as well, but they again did nothing.
- Defendants were also aware that prison staff, federal agents and a city of Milwaukee detective "outed" Watts as a confidential informant to inmates at the prison, including an inmate who is known to have had witnesses against him murdered.

Consistent with his original complaint, Watts also repeats allegations about his treatment in Colorado prisons. He also alleges mistreatment in the Wisconsin prison system before being transferred to Colorado.

OPINION

Watts alleges that defendants Raemisch and Westfield violated his Eighth Amendment rights by failing to protect him from other inmates despite knowing that he faced increased risk of attack as a confidential informant. To state such a claim, a plaintiff must plead sufficient facts to allow an inference to be drawn that: (1) he faced a "substantial risk of serious harm"; and (2) the named prison officials acted with "deliberate indifference" to that risk. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994); *Brown v. Budz*, 398 F.3d 904, 909 (7th Cir. 2005). Under the deliberate indifference

standard, a prison official is liable under the Eighth Amendment “only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Farmer*, 511 U.S. at 847.

At this stage in the proceedings, Watts’s supplemental allegations are sufficient to state a claim against defendants regarding dangers facing him as a confidential informant at the Dodge Correctional Institution, although going forward he will have to show that these high-ranking DOC officials had a responsibility to respond to his complaints and failed to do so. *See Burks v. Raemisch*, 555 F.3d 592, 596 (7th Cir. 2009) (rejecting “contention that any public employee who knows (or should know) about a wrong must do something to fix it”). Because the court specifically allowed Watts to supplement his complaint to include this claim, he will not be allowed to amend his complaint to include the remainder of Watts’s new allegations, none of which are relevant to this claim.

To the extent that Watts adds any new allegations that he was in danger at the Colorado prisons, he is already proceeding on this claim. To the extent that he seeks to bring any additional legal claims arising out of assaults at other Wisconsin prisons or by Jahnke at DCI, such claims belong in a separate lawsuit, which Watts is free to file if not time barred, although Watts will not be barred from presenting evidence of the *fact* of such assaults to the extent they may be relevant to proving defendants’ knowledge and indifference to the danger he faced while incarcerated.

ORDER

IT IS ORDERED that:

- (1) Plaintiff David Watts is GRANTED leave to amend his complaint consistent with his proposed supplement (dkt. 68) to allege an additional claim that defendants Dan Westfield and Rick Raemisch failed to protect him from harm at the Dodge Correctional Institution.
- (2) The court shall schedule a status conference, at which time Magistrate Judge Stephen Crocker will set a new schedule for moving this case to final resolution.

Entered this 14th day of June, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge