

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

CHARLES WILLIAM HOOPER,

Plaintiff,

OPINION AND ORDER

v.

KETTLE MORAINÉ CORRECTIONAL CENTER,
OFFICER MYERS,

11-cv-11-slc

Defendants.

On January 25, 2011, the court dismissed plaintiff Charles Hooper's complaint without prejudice for his failure to comply with Fed. R. Civ. P. 8. The court allowed him the opportunity to amend his complaint to answer the following questions:

- Where was he incarcerated when these alleged events occurred?
- When did the events occur?
- Who failed to protect Hooper from assault by another inmate?
- Who placed Hooper in a cold cell for 24 hours without clothing, blankets or food?
- What religion does he practice and how was he denied the right to practice it?
- Who did not allow him to attend the Ramadan feast?
- When was Hooper denied visitation, telephone calls and mail privileges and by whom?

Also, plaintiff was advised to name the actual people who took the actions (or who failed to act) that violated his constitutional rights. Now plaintiff has filed a response which the court construes as his amended complaint.

Hooper alleges that he was incarcerated at the Kettle Moraine Correctional Institution on April 28, 2009 when Officer Myers placed him in a cold cell for 24 hours without clothing, blankets or food. Also, he alleges that he was denied phone privileges by Officer Meyers, Officer

Ebert and Sergeant Jackel.¹ Unfortunately, plaintiff fails to name any individuals that did protect him from assault by another inmate, did not allow him to attend the Ramadan feast and denied him visits and mail privileges. Therefore, pursuant to 28 U.S.C. § 1915(e)(2), the court will screen only his claims that Officer Meyer placed him in a cold cell for 24 hours without clothing, blankets or food and denied him phone privileges.

OPINION

The Eighth Amendment's prohibition on "cruel and unusual punishment" establishes the minimum standard for the treatment of prisoners by prison officials. "Cruel and unusual punishment," is demonstrated by the "unnecessary and wanton inflictions of pain," including pain that is inflicted "totally without penological justification." *Hope v. Pelzer*, 536 U.S. 730, 737 (2001). Although this is the general standard that applies to all types of Eighth Amendment claims, it is applied differently depending on the claim involved. For claims involving conditions of confinement, the question is whether the petitioner has been denied the "minimal civilized measure of life's necessities" and that prison officials did so with a culpable state of mind. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). When considering whether a prisoner has stated a conditions-of-confinement claim, courts consider not only the nature of the alleged deprivation, but also the duration of that deprivation. *E.g., Dixon v. Godinez*, 114 F.3d 640, 643 (7th Cir. 1997).

¹ Only Office Meyers is named as a defendant in this action.

At this screening stage, plaintiff has alleged sufficient facts to support an inference that defendant Officer Myers deprived plaintiff of "minimal civilized measure of life's necessities", even if it was only for a short duration. To prevail on this claim, plaintiff will have to prove that Myers acted with deliberate indifference to plaintiff's health and safety. Plaintiff will be allowed to proceed on his Eighth Amendment claim against Officer Meyers.

On the other hand, plaintiff's allegation that he was denied phone privileges by defendant Meyers does not support a constitutional claim. A prisoner has no right to unlimited telephone use. *Benzel v. Grannar*, 869 F.2d 1105, 1108 (8th Cir.), *cert denied*, 493 U.S. 895 (1989). Plaintiff will not be allowed to proceed on this claim.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Charles Hooper's request for leave to proceed is GRANTED with respect to his Eighth Amendment claim against defendant Officer Meyer.
- (2) Plaintiff's request to proceed is DENIED in all other respects and defendant Kettle Moraine Correctional Center is DISMISSED from this case.
- (3) For the time being, 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.
- (4) 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.

- (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 defendant Meyers. 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 defendant.
- (6) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 22nd day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge