

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

CHRISTOPHER M. SANDERS,

Plaintiff,

v.

JEFF PUGH and DR. SEARS,

Defendants.

ORDER

11-cv-202-slc¹

In this proposed civil action for monetary and injunctive relief, plaintiff Christopher Sanders contends that defendants Jeff Pugh and Dr. Sears violated his Eighth Amendment rights by failing to provide him adequate dental care. Also, plaintiff contends that Dr. Sears violated his First Amendment rights by retaliating against him after plaintiff filed a grievance against him. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff was a prisoner when he filed his complaint, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

legally frivolous, malicious, fails 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. § 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 the complaint, I conclude that plaintiff may proceed on his Eighth Amendment claims against defendants Pugh and Sears and on his First Amendment claim against defendant Sears.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

At all times relevant to this complaint, plaintiff Christopher Sanders was incarcerated at the Stanley Correctional Institution, where defendant Jeffrey Pugh is the warden. In May 2010, plaintiff asked to be seen by a dentist, stating that he was in great pain from "compacted wisdom teeth." In June 2010, plaintiff saw defendant Dr. Sears, a dentist at the prison. Sears concluded that plaintiff did not need medical attention. When plaintiff told Sears that his teeth were causing him serious pain, Sears said, "No, I don't think that they should be bothering you. It's my professional opinion that no treatment is needed."

Plaintiff submitted a grievance, complaining that defendant Sears was deliberately indifferent to plaintiff's serious medical needs. Soon after plaintiff filed the grievance, he was

seen by a different dentist who ordered surgery on plaintiff's wisdom teeth. The surgery was performed on August 2, 2010 by a private dentist in Chippewa Falls. On the way back to the prison, plaintiff was bleeding from his mouth onto his hands and face. His mouth continued to bleed profusely at the prison. Plaintiff went to the health services unit but no one would help him.

Later that day, defendant Sears saw plaintiff for a follow up appointment. Sears was "rude, abrasive, and angry" and said, "Well, maybe you'll get dry socket! Then you'll really be in pain."

That night, plaintiff could not eat or drink and wrote to the health services unit for help. His pain medications were not working and he was in great pain. Defendant Sears responded to plaintiff's requests by stating that he would not help plaintiff with his pain. Plaintiff sought help for several days but no one responded until August 7, 2010, when defendant Sears agreed to see plaintiff. During the visit, plaintiff told Sears that he had been delirious from pain, hunger and thirst, that he had lost weight since the surgery and that he had been seeing "green spots." He apologized to Sears for filing a grievance against him and asked Sears for help. Sears told plaintiff that he had "dry sockets" and prescribed plaintiff more of the same pain medication, even though plaintiff told him it was ineffective.

Plaintiff's mouth became infected with pus, and he sought help from the health services unit and defendant Sears. No one responded, so plaintiff wrote to defendant Pugh

about his situation. He wrote to Pugh and Sears multiple times and filed several grievances that were either rejected or ignored.

DISCUSSION

A. Eighth Amendment Medical Care

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 risks 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 defendant fail to take reasonable measures to provide the necessary treatment?

Plaintiff contends that defendants Sears and Pugh violated his rights under the Eighth Amendment by failing to provide him adequate treatment for the pain caused by his wisdom teeth. Plaintiff contends that he was in serious pain, was bleeding and could not eat or drink for several days after he received surgery on his wisdom teeth. These allegations support an inference that plaintiff had a serious medical need. In addition, plaintiff alleges that he told defendants about his pain and need for treatment and that defendants either ignored him or provided treatment that they knew was ineffective. If these facts are true, they may support a claim that defendants were deliberately indifferent to plaintiff's serious medical needs. Thus, plaintiff may proceed with his Eighth Amendment claim against defendants Sears and Pugh.

B. First Amendment Retaliation

"An act taken in retaliation for the exercise of a constitutionally protected right

violates the Constitution.” DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). To state a claim for retaliation, plaintiff must: (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by defendant that would likely deter a person from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff’s protected activity was a motivating factor in defendant’s decision to take retaliatory action. Bridges v. Gilbert, 557 F.3d 541, 546 (7th Cir. 2009) (citing Woodruff v. Mason, 542 F.3d 545, 551 (7th Cir. 2008)).

Plaintiff contends that defendant Sears violated his First Amendment rights by retaliating against him in response to his inmate complaint against Sears. In the context of a retaliation claim, a prisoner’s right to file a grievance has been recognized as a constitutionally protected activity, Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005), so the only issue is whether defendant Sears took retaliatory action against plaintiff and whether he did so at least in part because plaintiff filed a grievance. Plaintiff alleges that after he filed a grievance against Sears, Sears was rude, abrasive and refused to provide medical treatment for plaintiff’s serious medical needs. Also, plaintiff alleges that Sears was aware of plaintiff’s grievance. These allegations are sufficient to imply that plaintiff’s grievance was a motivating factor in Sears’ treatment of plaintiff. Additionally, it is plausible to infer from them that a person of ordinary firmness would be deterred from filing

grievances in the future if it meant that he would receive insufficient treatment from his medical providers. Therefore, plaintiff may proceed with his retaliation claim against defendant Sears.

ORDER

IT IS ORDERED that

1. Plaintiff Christopher Sanders is GRANTED leave to proceed on the following claims:

(a) defendants Jeff Pugh and Dr. Sears violated his rights under the Eighth Amendment by exhibiting deliberate indifference to his serious medical needs; and

(b) defendants Sears violated his rights under the First Amendment by retaliating against him.

2. Under 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 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.

3. For the time being, plaintiff must send defendants a copy of every paper or

document that 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.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge