

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

DANIEL J. MITCHELL,

Plaintiff,

v.

OPINION and ORDER

11-cv-279-wmc

JAKE KRUEGER and THOMAS CICHA,

Defendants.

This is a proposed civil action in which plaintiff Daniel J. Mitchell alleges that defendants Jake Krueger and Thomas Cicha violated his Eighth Amendment rights by using excessive force against him. Mitchell asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915.

From the financial affidavit Mitchell has given the court, the Court concludes that he is unable to prepay the full fee for filing this lawsuit. Mitchell has made the initial partial payment of \$32.54 required of him under § 1915(b)(1). The next step is determining whether Mitchell's proposed action is (1) 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. 28 U.S.C. § 1915(e)(2). Because Mitchell meets this step as well, he will be allowed to proceed and the state required to respond.

ALLEGATIONS OF FACT

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). The operative complaint in this case is Mitchell's August 3, 2011 amended complaint. In this complaint, Mitchell alleges, and the court assumes for purposes of this screening order, the following facts:

- Plaintiff Daniel J. Mitchell is an inmate at the Wisconsin Secure Program Facility, located in Boscobel, Wisconsin, but was previously incarcerated at the Stanley Correctional Institution.
- Defendants Jake Krueger and Thomas Cicha are correctional officers at the Stanley Correctional Institution.
- On December 8, 2010, while Mitchell was incarcerated at the Stanley Correctional Institution, he was involved in an altercation with another inmate. Defendant Krueger asked him to stop fighting twice but Mitchell did not stop.
- Defendant Krueger tackled Mitchell, smashing his face into the ground. Two other officers also got on top of Mitchell. One was defendant Cicha.
- Defendant Krueger twisted Mitchell's arms behind his back.
- Defendant Cicha grabbed Mitchell by his shoulders and lifted him to his feet. While directing Mitchell to the back of the unit, Cicha twisted Mitchell's right wrist, causing him excruciating pain.
- Next, Krueger and Cicha slammed Mitchell's face onto a steel table top, splitting the flesh on his chin wide open.
- Mitchell was seen by medical personnel, who treated his cut. The cut was approximately three quarter inches long and one quarter inch deep.

OPINION

Mitchell claims that defendants violated his Eighth Amendment rights when they used excessive force and injured his chin. In the context of prison, excessive force claims arise under the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312 (1986) and *Hudson v. McMillian*, 503 U.S. 1 (1992). The Eighth Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503

U.S. at 6-7. To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. *Whitley*, 475 U.S. at 321; *Outlaw v. Newkirk*, 259 F.3d 833, 837 (7th Cir. 2001). In *Hudson*, 503 U.S. at 9-10, the Court explained that while the extent of injury inflicted was one factor to be considered, the absence of a significant injury did not bar a claim for excessive force so long as the officers used more than minimally necessary amount of force.

Here, Mitchell alleges that Krueger and Cicha slammed his face onto a steel table, causing a cut to his chin. At this early stage of the proceedings, Mitchell's allegations are sufficient to state a claim of excessive force under the Eighth Amendment against defendants. Mitchell should be aware, however, that to be successful on this claim, he will have to prove that defendants used force maliciously and sadistically to cause him harm.

ORDER

IT IS ORDERED that:

(1) Plaintiff Daniel Mitchell's request to proceed on his claims that defendants Jake Krueger and Thomas Cicha violated his Eighth Amendment rights is GRANTED.

(2) 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.

- (3) 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.
- (4) 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.
- (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 2nd day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge