

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

MARK ANTHONY OTT,

Plaintiff,

v.

PAMELA WALLACE, SGT. BOOS
and LT. GOETTLE,

Defendants.²

ORDER

11-cv-382-slc¹

Pro se plaintiff Mark Anthony Ott has filed an amended complaint that is ready for screening under 28 U.S.C. § 1915. In a letter filed on September 23, 2011, plaintiff asked the court to stay this case until he was released from prison. Dkt. #11. Although that date has come and gone, the court has yet to receive any further communication from plaintiff. (The September 23 letter identifies October 1, 2011, as his release date. In a previous letter, dkt. #6, plaintiff identified his release date as October 11, 2011.) I decline to delay the case any further.

¹ I am exercising jurisdiction over this case for the purpose of this order.

² I have amended the caption to reflect the defendants named in plaintiff's amended complaint.

Having reviewed plaintiff's complaint, I conclude that plaintiff has stated a claim upon which relief may be granted against defendant Goettle under the Eighth Amendment. Plaintiff's claim against Goettle is straightforward. Plaintiff alleges that he was beaten by three other prisoners and that, afterward, Goettle refused to take him to the health services unit despite visible injuries to his face. (Plaintiff does not allege that Goettle or the other defendants were responsible for the assault.)

A prison official may violate a prisoner's rights under the Eighth Amendment if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding 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 defendants know that plaintiff needed treatment?

(3) Despite their awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

At this stage, it is reasonable to infer from plaintiff's allegations that he had a serious medical need and defendant Goettle was aware of that need, but refused unreasonably to do anything about it. At summary judgment or trial, it will be plaintiff's burden to prove each of these elements.

Plaintiff does not include any allegations of wrongdoing against defendants Wallace and Boos, so I must dismiss the complaint as to them. He says nothing at all about Boos. With respect to Wallace, he says only that she is the warden of the facility where the assault occurred. However, a prison official cannot be held liable under the Constitution simply because she supervises other employees. Rather, she may be sued only if she knew about the constitutional violation and participated in it. George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) ("Only persons who cause or participate in the violations are responsible.") Plaintiff does not include any allegations that Wallace had any involvement in denying him medical care.

Because it is not clear whether plaintiff remains interested in prosecuting this case, I will not direct defendant Goettle to answer the complaint at this time. Instead, I will give

plaintiff a deadline to inform the court whether he wishes to continue. If he does not respond, I will dismiss the case without prejudice to plaintiff's refiling it at a later date. (Although plaintiff has not informed the court of his new address, court staff obtained it from plaintiff's probation officer.)

Plaintiff is advised that any further requests to stay the case will be denied. If plaintiff asks for another stay, I will construe that as an admission that he is unable to litigate the case at this time and I will dismiss it.

ORDER

IT IS ORDERED that

1. Plaintiff Mark Anthony Ott is GRANTED leave to proceed on his claim that defendant Goettle refused to provide medical assistance to him, in violation of the Eighth Amendment.
2. Plaintiff's complaint is DISMISSED as to defendants Pam Wallace and Sgt. Boos for plaintiff's failure to state a claim upon which relief may be granted.
3. Plaintiff may have until November 18, 2011 to inform the court in writing whether he wishes to continue with this lawsuit. If plaintiff fails to respond by that date or asks for another extension of time or a stay, I will dismiss the lawsuit without prejudice to plaintiff's

refiling it at a later date.

4. Defendant Goettle should not respond to plaintiff's complaint until directed to do so by this court.

Entered this 1st day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge