

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

CHARLES J. KAGIGEBI,

Plaintiff,

v.

LT. KURT BARTHEL, DEPUTY SUNDERLAND,
DEPUTY WHITE, DEPUTY PETERSON,
DEPUTY SAJDERA, DEPUTY ORMSON,
DEPUTY HODGKINSON, DEPUTY AMUNDSON
DEPUTY MIROSLAW and DR. MURRAY,

Defendants.

ORDER

11-cv-395-slc¹

In this proposed civil action for monetary relief, plaintiff Charles J. Kagigebi contends that several defendants employed at the Sawyer County jail in Hayward, Wisconsin, violated his constitutional rights by failing to provide him adequate mental health care and by subjecting him to unreasonably harsh conditions of confinement. He is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his proposed amended complaint and dismiss any portion that is legally

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

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 claims that defendants Barthel, Sunderland, White, Peterson, Sajdera, Ormson, Hodgkinson, Amundson and Mirosław subjected him to unconstitutional conditions of confinement and that these defendants, as well as defendant Murray, violated his constitutional rights by failing to provide him adequate mental health treatment. However, I will deny plaintiff's motion for appointment of counsel at this time because it is too early in the case to determine whether counsel is necessary.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Charles Kagigebi, currently an inmate at the Columbia Correctional Institution, has a long history of mental illness and has received diagnoses of "prolonged bereavement reaction with psychotic features," attention deficit hyperactivity disorder, post-traumatic stress disorder, personality disorder, dysthymic disorder, major depressive disorder with psychotic features, impulse control disorder and "a subarachnoid head injury with

hemorrhaging.” He has taken psychotropic medications to treat his mental illnesses for many years.

In July 2007, plaintiff was admitted to the Sawyer County jail while he awaited trial on criminal charges. Defendants Kurt Barthel, Deputy Sunderland, Deputy White, Deputy Peterson, Deputy Sajdera, Deputy Ormson, Deputy Hodgkinson, Deputy Amundson and Deputy Mirosław were employed at the jail. At the time plaintiff was admitted, he told the booking officers about his history of mental illness and his need to be placed back on his medications. On several occasions during the 90 days that plaintiff was incarcerated at the jail, he told all of the defendants that he needed treatment for his serious mental health needs. He also told defendants that he needed to see a psychiatrist and needed psychotropic medications.

For more than two months, defendants refused to provide plaintiff any mental health treatment. During the two months, plaintiff’s mental condition deteriorated to the point where he was having suicidal thoughts. He began to harm himself by jamming objects into his nostrils until he bled profusely. On one occasion, he injured himself and filled a spray bottle with his blood, spraying the cell block and himself with it. Defendants knew about plaintiff’s behavior but refused to provide him any mental health treatment. Instead, defendants placed him in administrative segregation. In segregation, plaintiff was held in a very cold, concrete room with no bedding or toilet paper and only a smock for clothing. The

only food he received was a “pureed loaf” that made him sick. He received no water or other liquids for five days.

After plaintiff had been at the jail for approximately two months, he saw a psychiatrist, defendant Dr. Murray. Dr. Murray knew about plaintiff’s history of mental illness and current depression and self-destructive behavior. However, Dr. Murray refused to provide plaintiff any treatment.

DISCUSSION

A. Mental Health Care

Plaintiff contends that all defendants violated his constitutional rights by failing to provide him access to mental health care. Because plaintiff was a pretrial detainee at the time of his incarceration at the Sawyer County jail, his claim falls under the Fourteenth Amendment’s due process guarantee rather than the Eighth Amendment’s protection from cruel and unusual punishment. Forrest v. Prine, 620 F.3d 739, 743-44 (7th Cir. 2010). However, the Fourteenth Amendment provides at least as much protection as the Eighth Amendment standards and thus, it is appropriate to borrow the Eighth Amendment standard to determine whether a pretrial detainee has stated a claim of inadequate mental health care. Id.; Murphy v. Walker, 51 F.3d 714, 717 (7th Cir. 1995).

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 v. Gamble, 429 U.S. 97, 104 (1976); 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 defendants know that plaintiff needed treatment?
- (3) Despite defendants’ awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

Plaintiff alleges that he has serious mental health problems that caused him to harm himself while at the Sawyer County jail. I can infer that these problems are serious medical

needs that require treatment. Additionally, plaintiff alleges that defendants Barthel, Sunderland, White, Peterson, Sajdera, Ormson, Hodgkinson, Amundson and Mirosław knew plaintiff had mental health problems and knew he was engaging in bizarre and harmful behavior but refused to allow him to see a psychiatrist or receive any mental health treatment for more than two months. Instead, these defendants placed plaintiff in administrative segregation. When plaintiff was finally seen by a psychiatrist, defendant Murray, the psychiatrist did nothing to help plaintiff. These allegations imply that these defendants knew plaintiff needed treatment for his mental health needs and did not take reasonable measures to address those needs. Thus, plaintiff may proceed on his Fourteenth Amendment health care claim against all defendants.

B. Conditions of Confinement

Plaintiff contends that defendants subjected him to unconstitutional conditions of confinement when they placed him in administrative segregation. The Eighth (and Fourteenth) Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Sain v. Wood, 512 F.3d 886, 893 (7th Cir. 2008). To demonstrate that jail conditions violated the Eighth Amendment, plaintiff must allege that the conditions were sufficiently serious so that they denied him “the minimal civilized measure of life’s necessities,” Farmer, 511 U.S. at

834, or “exceeded contemporary bounds of decency of a mature, civilized society.” Lunsford v. Bennet, 17 F.3d 1574, 1579 (7th Cir. 1994). This means that the conditions of the cell must create a substantial risk of serious harm, Farmer, 511 U.S. at 847, or at the very least, the conditions must deprive plaintiff of some “identifiable human need such as food, warmth, or exercise,” Wilson v. Seiter, 501 U.S. 294, 304 (1991).

In addition, plaintiff must allege that defendants acted with deliberate indifference to a risk of serious harm to plaintiff. Lunsford, 17 F.3d at 1579. As explained above, “deliberate indifference” means that defendants knew that plaintiff faced a substantial risk of serious harm and yet disregarded that risk by failing to take reasonable measures to address it. Farmer, 511 U.S. at 847.

Plaintiffs’ allegations are sufficient to state a claim against defendants Barthel, Sunderland, White, Peterson, Sajdera, Ormson, Hodgkinson, Amundson and Miroslaw. Living in a cold cell with no bedding, no toilet paper, no water, little clothing and only a pureed loaf that causes vomiting may subject a prisoner to an unnecessary infliction of pain and deprive the prisoner of a human need such as warmth or hydration. In addition, plaintiff alleges that all of these defendants were responsible for placing him in these conditions. At this stage, I can infer that these defendants were responsible for the conditions in segregation and had the ability to change the conditions. Ultimately, plaintiff will have to prove that each defendant should be held personally responsible for the allegedly

unconstitutional conditions of plaintiff's confinement in segregation.

C. Appointment of Counsel

Plaintiff filed a motion for appointment of counsel with his proposed complaint, contending that it will be difficult for him to litigate this case for several reasons. Specifically, he points out that the events at issue occurred more than three years ago in an institution at which he is no longer incarcerated, which will make it difficult to obtain the evidence necessary to prove his claim. In addition, plaintiff says that he has a fifth-grade reading level, several learning disabilities and mental illnesses, no experience with litigation, no understanding of legal principles and that he relied entirely on a jailhouse lawyer to draft and file the pleadings and motions in this matter. He has submitted the names and addresses of several lawyers who declined to represent him in this case.

Appointment of counsel is appropriate in those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007). Although plaintiff may lack legal knowledge, that is not a sufficient reason to appoint counsel, because this handicap is almost universal among pro se litigants. As this case progresses, plaintiff will improve his knowledge of court procedure. To help him, this court instructs pro se litigants at a preliminary pretrial conference about how to use discovery

techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, plaintiff will be provided a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the purpose of helping pro se litigants understand how these matters work.

As for the other issues raised by plaintiff, it is too early to tell whether they will overwhelm his ability to litigate this case. At this stage, I cannot conclude that it will be too difficult for plaintiff to obtain the evidence necessary to prove his case, even though the events happened several years ago at an institution in which he is no longer detained. Plaintiff will have discovery procedures available to him and may continue to receive the assistance of his jailhouse lawyer or another inmate. Finally, plaintiff's mental health issues may be a concern but he has not yet shown that they have affected his litigation of this case. As this case progresses, it may become apparent that appointment of counsel is warranted, but for now I will deny his motion. Plaintiff is free to renew his motion at a later date.

ORDER

1. Plaintiff Charles Kagigebi is GRANTED leave to proceed on the following claims:
 - a. Defendants Kurt Barthel, Deputy Sunderland, Deputy White, Deputy Peterson, Deputy Sajdera, Deputy Ormson, Deputy Hodgkinson, Deputy Amundson, Deputy Mirosław and Dr. Murray violated his rights under the Fourteenth Amendment by failing

to provide him adequate mental health care; and

b. Defendants Barthel, Sunderland, White, Peterson, Sajdera, Ormson, Hodgkinson, Amundson and Mirosław violated his rights under the Fourteenth Amendment by subjecting him to excessively harsh conditions of confinement.

2. Plaintiff's motion for appointment of counsel, dkt. #4, is DENIED without prejudice to him renewing his motion at a later date.

3. Copies of plaintiff's complaint and this order are being forwarded to the United States Marshall for service on defendants.

4. For the remainder of the lawsuit, 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.

5. 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.

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 officials at the Columbia Correctional Institution of that institution's obligation to deduct payments until

the filing fee has been paid in full.

Entered this 14th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge