

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

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DEON BOLDEN,

Plaintiff,

v.

ORDER

11-cv-855-bbc

WARDEN MICHAEL THURMER, CAPT. OLSON,
CAPT. GEMPELER, CAPT. HOLM, LT. SCHULTZ,
SGT. LYNN, SGT. BLAKE, OFFICER CROSS,
DON STRAHOTA, DR. CALLISTER,
TODD. R. GRISDALE, ANA PH.D,
WARDEN "NEW" WILLIAM POLLARD,
GARY H. HAMBLIN, LARRY L. JENKINS,
DR. GARBELMAN PH.D., DR. DEBORAH FISCHER, PH.D.,
DR. GARY ANKARLO, PH.D., DR. LESLEY BAIRD, PSY.D.,
T. BAUER, CAPT. MEIL, MR. WIERRENGO, BHU,
SGT. BAUMOER, DR. LARSON RN and
TAMARA GRIGSBY, Wis. State Representative,

Defendants.

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In this proposed civil action under 42 U.S.C. § 1983, plaintiff Deon Bolden, an inmate at the Waupun Correctional Institution, contends that several state employees violated his rights under the Eighth Amendment by failing to protect him from the assaults of his cellmate. Plaintiff has paid the \$350 filing fee.

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

Having reviewed the complaint, I conclude that plaintiff may proceed on his claim that defendant Officer Cross violated his rights under the Eighth Amendment by failing to protect him from a substantial risk of serious harm. However, plaintiff has not stated a constitutional claim against any other defendant. Therefore, the other defendants will be dismissed from the case.

Also before the court is plaintiff's motion for appointment of counsel. Dkt. #3. Because I am not persuaded that counsel is necessary, I will deny the motion. Plaintiff may renew his motion for appointment of counsel at a later date if he finds that he cannot adequately represent himself.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Deon Bolden is a prisoner at the Waupun Correctional Institution, located

in Waupun, Wisconsin. Defendant William Pollard is the warden of the prison. In 2010, defendant Michael Thurmer was the warden. Both Pollard and Thurmer had policies prohibiting inmates at the prison from choosing their own cellmates.

In 2010, plaintiff shared a cell with Jerome Long. Plaintiff and Long did not get along well and Long threatened plaintiff with violence on multiple occasions. Defendant Lt. Schultz knew that plaintiff and Long did not get along well. Defendants Dr. Todd Grisdale, Dr. Callister, Dr. Deborah Fischer, Dr. Gary Ankarlo, Dr. Ana, Dr. Garbelman and Dr. Lesley Baird had treated plaintiff for mental health problems at the prison. They all knew that plaintiff was distressed about being in a cell with Long.

On May 17, 2010, plaintiff and Long got into an argument, which led to Long's beating up plaintiff. Defendant Cross, a correctional officer, was notified of the incident and came to plaintiff's cell. Cross saw that plaintiff had serious injuries to his face and body and Cross asked plaintiff whether he was all right. Plaintiff told Cross that he was not and Cross told plaintiff he would be right back. After Cross left, Long began beating plaintiff again. Long beat plaintiff for 20 or 25 minutes, causing serious injuries. Cross never returned. Eventually, officers in the cell block came to the cell and broke up the fight, taking Long to the segregation unit and plaintiff to the health services unit. Later, plaintiff was transferred to the hospital to receive treatment for his injuries.

At some point, defendants Captain Olson, Captain Gempeler, Captain Holm, Captain

Meil, Lt. Bauer, Sergeant Lynn, Sergeant Blake and Sergeant Baumoe heard about the May 17, 2010 incident between plaintiff and Long.

DISCUSSION

A. Eighth Amendment Failure to Protect

Under the Eighth Amendment, prison officials are required to “take reasonable measures to guarantee” the safety of their prisoners. Farmer v. Brennan, 511 U.S. 825, 832 (1994). A prison official may violate the Eighth Amendment if he acts with “deliberate indifference” to a prisoner’s exposure to a “substantial risk of serious harm.” Id. at 834. The Court of Appeals for the Seventh Circuit has held that a particularly violent prisoner’s unsupervised access to others may pose a substantial risk of serious harm. Brown v. Budz, 398 F.3d 904, 913 (7th Cir. 2005) (Caucasian inmate faced substantial risk when assailant with known propensity for attacking Caucasians had unsupervised access to shared space where inmate was lounging); see also Billman v. Indiana Dept. of Corrections, 56 F.3d 785, 788-89 (7th Cir. 1995) (HIV positive inmate with “propensity” for raping cellmates constituted substantial risk to cellmates).

Plaintiff alleges that on March 17, 2010, defendant Cross saw that plaintiff’s cellmate, Jerome Long, had seriously injured plaintiff. Instead of separating the inmates, Cross left and Long continued to beat plaintiff. As a result, plaintiff suffered serious injuries

and had to be transported to the hospital for treatment. These allegations are sufficient to infer that Cross was aware that plaintiff was at substantial risk of serious harm but failed to take reasonable measures to abate the risk. Therefore, plaintiff may proceed on his Eighth Amendment failure to protect claim against defendant Cross.

However, plaintiff's allegations do not suggest that any other defendant knew that plaintiff faced a substantial risk of serious harm from inmate Long. Plaintiff contends that defendants Thurmer and Pollard should be held liable for his injuries because their policies prohibit prisoners from choosing their own cellmates. However, the existence of such a policy does not permit an inference that Thurmer and Pollard knew that plaintiff faced a substantial risk of harm from his cellmate. Plaintiff alleges that defendants Captain Olson, Captain Gempeler, Captain Holm, Captain Meil, Lt. Bauer, Sergeant Lynn, Sergeant Blake and Sergeant Baumoer heard about the May 17, 2010 incident between plaintiff and Long. However, plaintiff does not allege that these defendants were ever aware that he was at risk of harm before he was attacked and he does not allege that he is still at risk of harm and that these defendants could act to protect him. Also, plaintiff alleges that defendant Lt. Schultz, as well as mental health care providers at the prison, including defendants Dr. Grisdale, Dr. Callister, Dr. Deborah Fischer, Dr. Ana, Dr. Garbelman, Dr. Gary Ankarlo and Dr. Lesley Baird, knew that plaintiff was unhappy about being housed with Long. However, plaintiff does not allege that these defendants had reason to believe that Long had a propensity

toward violent behavior or that Long posed a significant risk of violence to plaintiff.

Further, although plaintiff named several additional prison officials and staff members as defendants in his complaint, he has not alleged any facts suggesting that defendants Don Strahota, Gary Hamblin, Larry Jenkins, Mr. Wierrengo or Dr. Larson were aware plaintiff was at substantial risk of serious harm or that these defendants were in a position to intervene on plaintiff's behalf. In fact, plaintiff does not explain why he is suing these people. Therefore, they will be dismissed from the case. Finally, it is not clear why plaintiff has named state representative Tamara Gigsby as a defendant in this case. Thus, she will be dismissed as well.

B. Motion for Appointment of Counsel

Plaintiff filed a motion for appointment of counsel in conjunction with his complaint. He states that he needs counsel because he has no knowledge of the law and he suffers from mental and physical disabilities that will hinder his ability to prosecute this case. Plaintiff is receiving help from another inmate. He has shown that he made reasonable efforts to find a lawyer by submitting the names and addresses of several lawyers who declined to represent him on the issues 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, 645-55 (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. To help him and others in similar situation, 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 very purpose of helping pro se litigants understand how these matters work.

At this stage, it does not appear that plaintiff's physical and mental disabilities have hindered his ability to proceed with his case. Plaintiff's case is not complex and he may continue to receive help from other inmates. 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

IT IS ORDERED that

1. Plaintiff Deon Bolden's motion for appointment of counsel, dkt. #3, is DENIED.
2. Plaintiff is GRANTED leave to proceed on his claim that defendant Officer Cross

violated his rights under the Eighth Amendment by failing to protect him from the substantial risk that plaintiff's cellmate would cause him serious harm.

3. Plaintiff is DENIED leave to proceed on his claims against defendants Lt. Schultz, Michael Thurmer, Captain Olson, Captain Gempeler, Captain Holm, Sergeant Lynn, Sergeant Blake, Don Strahota, Dr. Callister, Dr. Todd Grisdale, Dr. Ana, William Pollard, Gary Hamblin, Larry Jenkins, Dr. Garbelman, Dr. Deborah Fischer, Dr. Gary Ankarlo, Dr. Lesley Baird, T. Bauer, Captain Meil, Mr. Wierrengo, Sergeant Baumoer, Dr. Larson and Tamara Grigsby. These defendants are DISMISSED from the case.

4. 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 defendant. 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 on behalf of the state defendants.

5. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

6. 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 23d day of February, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge