

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

LORENZO JOHNSON,

Plaintiff,

OPINION AND ORDER

v.

13-cv-114-wmc

LT. WIENSLO, LT. SABISH, LT. SCHENERDER,
SGT. BORAH, C.O. 2 LUNDHA, C.O. 2 GILLS,
MR. GREFF, and C.O. 2 BEAHN,

Defendants.

In this proposed civil action, plaintiff Lorenzo Johnson alleges that correctional officers and others employed by the Wisconsin Department of Corrections at Waupun Correctional Institution violated his Eighth Amendment rights by placing him in a feces-filled cell for three days. Johnson asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Johnson provided, the court previously concluded that he is unable to prepay the full fee for filing this lawsuit and he has since made the initial partial payment of \$133.96 required of him under § 1915(b)(1). The next step is determining whether Johnson'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. § 1915A. Because Johnson meets this step as to his Eighth Amendment conditions of confinement claim, 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). In his complaint, Johnson alleges, and the court assumes for purposes of this screening order, the following facts:

- Johnson is, and was for all times relevant to his complaint, an inmate at the Waupan Correctional Institution ("Waupun").
- Lt. Wienslo, Lt. Sabish, Lt. Schenerder, Sgt. Borah, C.O. 2 Lundha, C.O. 2 Gills, and C.O. 2 Beahn are all correctional officers employed at Waupun. Mr. Greff is the programming Supervisor and Unit Manager of the Health and Segregation Complex Building ("HSC") at Waupun.
- On August 23, 2012, another inmate Terrence Shipp was placed in Cell A-104 in the H.S.C. building for observation by Beahn, among other officers. Upon information and belief, Johnson alleges that soon after that inmate was placed in this cell, he noticed feces spread on the windows, trap door, walls and floor. Shipp requested to be moved, but his request was denied. Only after he flooded his toilet was he moved to a different cell.
- Also on August 23, 2012, at approximately 1:00 p.m., Johnson suffered a "panic attack," which caused him to want to self-harm. Johnson was escorted to a holding cell for an interview with a psychologist, after which it was determined Johnson should be placed in observation.
- Johnson alleges that he overheard a discussion between Wienslo and Beahn about whether he should be placed on a different floor or should remain in the A-Wing. Johnson overheard Beahn say, "well [he] wants to be placed in the poop cell." (Compl. (dkt. #1) ¶ 5.)
- Johnson was strip searched and placed on linen restriction. All of his clothing except his underwear was removed. Beahn and Burns then escorted him to Cell A-104.
- Johnson alleges that soon after being placed in the cell, he smelled feces and noticed it on the window, food trap door, walls and floor.
- Lundha, Gills, and Borah served Johnson meals and checked on him every 15 minutes. Johnson showed them the feces on the trap door, and told them that he could not eat the food after it had been passed through it. On each

occasion, he asked to be moved to a difference cell, but was told that they had no authority to move him and would notify their supervisor.

- On August 24, 2012, Sabish arrived at the cell. Johnson showed him the feces on the wall and trap door and asked to be moved. Sabish told Johnson twice that he would leave a note for first shift to pull Johnson out and have the cell cleaned.
- Johnson also complained to Wienslo, who left and never responded to his request.
- On August 24, 2012, Johnson submitted a psychological services request form, notifying psychological services that he had been placed in a cell full of feces. (Compl., Ex. C (dkt. #1-1) p.3.)
- Also on August 24, 2012, Johnson submitted an Interview Request form to Greff, informing him that he had been placed in a cell filled with feces and requesting he be moved to a different cell. (Compl., Ex. D (dkt. #1-1) p.4.)¹
- On August 25, 2012, Johnson asked Beahn why he had placed him in this cell and asked to be moved to another cell. Beahn responded, “you wanted to be placed in the poop cell.” (Compl. (dkt. #1) ¶ 13.)
- On August 26, 2012, Johnson was removed from Cell A-104.
- On August 31, 2012, Johnson filed an inmate complaint regarding his placement in Cell A-104. (Compl., Ex. F (dkt. #1-1) pp.6-7.)
- Johnson alleges that because of his placement in Cell A-104 he (1) “contracted some type of Jungle infection on his toe” and (2) was “unable to maintain a[n] adequate and nutritional diet for three consecutive days, causing him plain and suffering in the form of stomach cramps and aches, headaches and dizziness.”
- Johnson also alleges that Wienslo and Beahn’s conduct was “outrageous, wrongful and arbitrary and shocked the conscience.” (Compl. (dkt. #1) ¶ 20.)

¹ Greff responded on September 6, 2012, “The cells are cleaned and logged. Plus you can clean your cell weekly.” (Compl., Ex. D (dkt. #1-1) p.4.)

OPINION

Johnson asserts two causes of action: (1) cruel and unusual punishment claim under the Eighth Amendment against all defendants; and (2) a procedural and substantive due process claim under the Fourteenth Amendment against Wienslo and Beahn. The court considers each in turn.

I. Eighth Amendment Conditions of Confinement Claim

The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon prison officials the duty to provide prisoners "humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). To constitute cruel and unusual punishment, conditions of confinement must be extreme.

A general "lack of due care" by prison officials does not rise to the level of an Eighth Amendment violation because "it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

To demonstrate that prison conditions violated the Eighth Amendment, a plaintiff must allege facts that satisfy a test involving both an objective and subjective component. *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994). The objective analysis focuses on whether prison conditions were sufficiently serious so that "a prison official's act or omission results in the denial of 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*, 17 F.3d at 1579. The subjective component requires an

allegation that prison officials acted wantonly and with deliberate indifference to a risk of serious harm to plaintiff. *Id.*

Here, Johnson alleges that he was housed in a cell for three days which was covered in feces. Courts, including the Seventh Circuit, have found that exposure to feces over a similar period of time states a claim under the Eighth Amendment. *See Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989) (finding prisoner's allegation that he was held "in a cell for three days without running water and in which feces are smeared on the walls while ignoring his requests for cleaning supplies and for the water to be turned on sufficient to state an Eighth Amendment claim); *Isby v. Clark*, 100 F.3d 502, 505-06 (7th Cir. 1996) (prisoner held in segregation cell that allegedly was "filthy, with dried blood, feces, urine and food on the walls" stated a claim under the Eighth Amendment); *Salim v. Carlson*, No. 11-CV-1118-JPS, 2013 WL 4017062, at *9 (E.D. Wis. Aug. 6, 2013) (allowing prisoner to proceed on his Eighth Amendment claim based on being held for "twenty-four hours in a cell smeared with another inmate's feces"); *see generally DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) ("Exposure to human waste, like few other conditions of confinement, evokes both the health concerns emphasized in *Farmer* and the more general standards of dignity embodied in the Eighth Amendment.") (citations omitted).

Moreover, Johnson alleges that he complained to each of the proposed defendants about the conditions of his cell and asked to be moved to a different cell and they all ignored his requests. *See Boyd v. Pollard*, No. 12-CV-803, 2012 WL 4903329, at *4 (E.D. Wis. Oct. 16, 2012) (screening claim to go forward where prisoner complained about

feces in his cell to defendants and defendants failed to respond) (citing *Vinning-El v. Long*, 482 F.3d 923, 924-25 (7th Cir. 2007); *Reed v. McBride*, 178 F.3d 849, 854 (7th Cir. 1999)).

Finding Johnson adequately plead both the objective and subjective components of a conditions of confinement claim, the court will grant Johnson leave to proceed on an Eighth Amendment claim against all of the named defendants.

II. Fourteenth Amendment Due Process Claim

Johnson also seeks to bring a claim under the Fourteenth Amendment against defendants Wienslo and Beahn. The Fourteenth Amendment prohibits a state from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. An allegation of deprivation of due process rights states a claim under both procedural and substantive due process. *Black v. Lane*, 22 F.3d 1395, 1402-03 (7th Cir. 1994); *Kauth v. Hartford Ins. Co.*, 852 F.2d 951, 954 n.4 (7th Cir. 1988). To plead a violation of procedural or substantive due process, plaintiff must allege that he was deprived of a property or liberty interest. While Johnson has a right to be free from cruel and unusual punishment, this claim is covered by the Eighth Amendment. The court sees no sound reason or legal basis to interject a due process claim into this case. *See McGee v. Adams*, 721 F.3d 474, 480 (7th Cir. 2013) (explaining that the Fourteenth Amendment applies to detainees and the Eighth Amendment to convicted prisoners, but that the standards are the same).

ORDER

IT IS ORDERED that:

- 1) Plaintiff Lorenzo Johnsons' request to proceed on his claim that defendants Lt. Wienslo, Lt. Sabish, Lt. Schenerder, Sgt. Borah, C.O. 2 Lundha, C.O. 2 Gills, C.O. 2 Beahn and Mr. Greff violated his rights under the Eighth Amendment is GRANTED.
- 2) Plaintiff's request to proceed against defendants Wienslo and Beahn on a Fourteenth Amendment due process claim is DENIED.
- 3) 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.
- 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.
- 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 January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge