

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

JAMES ANTHONY DAVIS,

Plaintiff,

v.

BRIAN PILLER, MARC CLEMENTS,
and DYLAN RADTKE,

Defendants.

OPINION & ORDER

14-cv-687-jdp

Plaintiff James Anthony Davis, a prisoner in the custody of the Wisconsin Department of Corrections at the Redgranite Correctional Institution, has submitted a proposed civil complaint under 42 U.S.C. § 1983, alleging that defendant Correctional Officer Brian Piller fabricated a story about plaintiff overdosing on medication, leading him to be hospitalized unnecessarily and forced to pay restitution following a disciplinary hearing for misuse of medication. Plaintiff seeks leave to proceed with his case *in forma pauperis*, and he has already made an initial partial payment of the filing fee previously determined by the court.

The next step is for the court to screen plaintiff's 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. §§ 1915 & 1915A. In screening 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 review of the complaint with this principle in mind, I conclude that plaintiff may not proceed with due process claims concerning the conduct report plaintiff received or the restitution he

was forced to pay, but that he may proceed on due process and Eighth Amendment claims regarding Piller forcing him to undergo unnecessary medical treatment.

ALLEGATIONS OF FACT

Plaintiff James A. Davis is currently an inmate at the Redgranite Correctional Institution. The events relevant to this complaint occurred while plaintiff was incarcerated at the Dodge Correctional Institution (DCI). On May 1, 2011, plaintiff was in the segregation unit on observation status at DCI. Defendant Correctional Officer Brian Piller came to plaintiff's cell window, "making threats at" plaintiff. Plaintiff states that he "got to making threats back at" Piller. Piller said, "Watch this," and told plaintiff to put his pills down, even though plaintiff had no medication with him. Piller called the unit sergeant and falsified a story about plaintiff overdosing on medication in a suicide attempt. Plaintiff was taken to the hospital to treat the overdose. Plaintiff was catheterized by a nurse to collect his urine, even though plaintiff could have catheterized himself.

All test results came back negative for the presence of medication in plaintiff's system. However, plaintiff received a conduct report for misuse of medication and was charged over \$1,400 in restitution. Plaintiff did not know about the restitution until he was released and reincarcerated, at which point plaintiff became aware that money was being removed from his prison account. Plaintiff's later grievance was denied despite his presenting evidence showing that his hospital tests showed no indication of medication in his system.

ANALYSIS

I understand plaintiff to be saying that defendant Piller fabricated a story about plaintiff overdosing on medication, leading him to be hospitalized and forced to pay restitution following a disciplinary hearing for misuse of medication.

The mere fact that plaintiff was issued a conduct report based on false evidence and then forced to pay restitution does not create a cognizable claim. Such a claim is ordinarily considered under the Due Process Clause. However, plaintiff cannot bring a claim for violation of his procedural due process rights because “an allegation that a prison guard planted false evidence which implicates an inmate in a disciplinary infraction fails to state a claim for which relief can be granted where the procedural due process protections as required . . . are provided.” *Hanrahan v. Lane*, 747 F.2d 1137, 1141 (7th Cir. 1984). To provide a prisoner due process in disciplinary proceedings, the institution must give him: (1) written notice of the claimed violation at least 24 hours before the hearing; (2) the opportunity to be heard before an impartial decision maker; (3) the opportunity to call witnesses and present documentary evidence, consistent with institutional safety; and (4) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539, 563-71 (1974). In addition, the findings of the disciplinary committee must be “supported by some evidence in the record.” *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 456-47 (1985). Plaintiff’s allegations do not suggest that he was deprived any of these procedures, so he cannot bring a procedural due process claim even though he believes that he should not have been found guilty of misuse of medication. Although this result may seem unfair, it relates to the nature of the Due Process Clause, which is directed primarily at improving the accuracy

of decisions through fair procedures rather than direct review of the evidence. *See McPherson v. McBride*, 188 F.3d 784, 787 (7th Cir. 1999).

Courts have left an opening to bring substantive due process claims related to fabricated conduct reports, but this type of claim may be brought only where the false charges were issued in retaliation for the exercise of a constitutional right. *Lagerstrom v. Kingston*, 463 F.3d 621, 623 (7th Cir. 2006), *Black v. Lane*, 22 F.3d 1395, 1402–03 (7th Cir. 1994). Plaintiff's allegations, suggesting that Piller fabricated the suicide attempt because he and plaintiff were "making threats" at each other, do not show that Piller retaliated against plaintiff for exercising a constitutional right; plaintiff does not have a First Amendment right to "make threats" at a correctional officer.

But outside the issues regarding the conduct report and restitution, a question remains whether plaintiff may bring a claim against Piller for intentionally hospitalizing him to be treated for an overdose when he knew that plaintiff had in fact not overdosed.

Under the Due Process Clause, a competent person has a liberty interest in refusing unwanted medical treatment. *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 262 (1990). This interest may be impinged by prison staff where the decision is "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). Accepting plaintiff's allegations as true, it is difficult to see any legitimate penological interest in intentionally subjecting a prisoner to unnecessary medical treatment, so I will allow plaintiff to proceed on a due process claim against Piller.

Although this area of the law has not been well developed, it also seems that plaintiff could bring an Eighth Amendment claim against Piller for intentionally subjecting him to invasive or humiliating medical treatment serving no legitimate penological purpose. The

allegations raised by plaintiff are somewhat akin to those raised by prisoners alleging that they were strip searched “in a harassing manner intended to humiliate and cause psychological pain.” *Mays v. Springborn*, 575 F.3d 643, 649 (7th Cir. 2009); *see also King v. McCarty*, 781 F.3d 889, 897 (7th Cir. 2015) (prisoner stated Eighth Amendment claim for being “unnecessarily paraded in a see-through jumpsuit”). Therefore, I will allow plaintiff to proceed on an Eighth Amendment claim as well.

Finally, I note that plaintiff names DCI Warden Marc Clements and DCI Security Director Dylon Radtke as defendants, but he does not include any allegations about what they did to violate his rights, so I will dismiss these defendants from the lawsuit.

ORDER

IT IS ORDERED that:

1. Plaintiff James Anthony Davis is GRANTED leave to proceed on due process and Eighth Amendment claims against defendant Brian Piller for intentionally subjecting plaintiff to unnecessary medical procedures.
2. Plaintiff is DENIED leave to proceed on the remainder of his complaint. Defendants Marc Clements and Dylon Radtke are DISMISSED from this action.
3. 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 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 defendant.
4. 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 defendant’s lawyer directly rather than defendant himself. The court will disregard any documents submitted by plaintiff unless he shows on the court’s copy that he has sent a copy to defendant or to defendant’s 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 the filing fee for this case in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under *Lucien v. DeTella*, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered May 8, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge