

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

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JAMES J. DAVIS,

Plaintiff,

OPINION AND ORDER

v.

14-cv-617-wmc

WILLIAM GEE,

Defendant.

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Pro se plaintiff James J. Davis has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that William Gee, a correctional sergeant supervisor at the Columbia Correctional Institution, violated his rights under the Eighth Amendment by failing to protect him from attempting suicide. Davis has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. § 1915A. Having reviewed the complaint, the court concludes that Davis may proceed.

OPINION

The Eighth Amendment prohibits “cruel and unusual punishment,” which includes punishment that “involve[s] the unnecessary and wanton infliction of pain.” *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). More specifically, the Eighth Amendment imposes a duty on prison officials to provide “humane conditions of confinement” and to ensure that “reasonable measures” are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 834-35 (1994). An inmate may prevail on a claim under the Eighth

Amendment by showing that the defendant acted with “deliberately indifference” to a “substantial risk of serious harm” to his health or safety. *Id.* at 836.

Attempted suicide constitutes a serious harm. *See Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010). “Deliberate indifference to a risk of suicide is present when an official is subjectively ‘aware of the significant likelihood that an inmate may imminently seek to take his own life’ yet ‘fail[s] to take reasonable steps to prevent the inmate from performing the act.’” *Pittman ex rel. Hamilton v. County of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (alteration in original) (*quoting Collins v. Seeman*, 462 F.3d 757, 761 (7th Cir. 2006)). *See also Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 665 (7th Cir. 2012) (“[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies.”).

Davis alleges in his complaint that on March 13, 2014, while confined in disciplinary segregation at the Columbia Correctional Institution, he showed defendant Officer Gee a handful of pills and told him that he was feeling suicidal and needed to be placed on observation status. Gee reportedly looked at the pills in Davis’s hand and responded “sarcastically” by asking Davis if he wanted “some Vaseline with that.” Davis then began to scream that he was about to overdose on the pills and commit suicide, but Gee allegedly ignored him and left without taking the pills away or attempting to help. Davis then took the pills in an attempt to take his own life. Davis was taken to the Health Service Unit and then transported to the emergency room at a local hospital for treatment.

Under the less stringent pleading standards owed *pro se* litigants, Davis’s allegations are sufficient to state a claim against Gee under the Eighth Amendment. As alleged, Gee was aware that Davis intended to attempt suicide and responded by sarcastically encouraging

Davis to swallow a handful of pills. At this early stage, these allegations support an inference that Gee knew of a substantial risk of serious harm to Davis's health or safety, and that he consciously failed to take reasonable steps to prevent the harm.

At summary judgment or trial, Davis will have to prove that Gee actually knew there was a substantial risk that Davis was likely to seriously harm himself. In addition, he will have to show that Gee had the ability to take reasonable steps that could have prevented his attempted suicide, but consciously failed to do so. *Collins*, 462 F.3d at 762 (“Deliberate indifference requires a showing of ‘more than mere or gross negligence’[;] . . . it requires a ‘showing as something approaching a total unconcern for the prisoner’s welfare in the face of serious risks.’”) (citations omitted).

## ORDER

IT IS ORDERED that:

- (1) Plaintiff James J. Davis is GRANTED leave to proceed on his claim that defendant William Gee violated his rights under the Eighth Amendment by acting with deliberate indifference to the substantial risk that Davis would attempt suicide on March 13, 2014.
- (2) 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 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 for the defendant.
- (3) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendant, he should serve the lawyer directly rather than the 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 the defendant or to defendant's attorney.

- (4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopier machine, he may send out identical handwritten or typed copies of his documents.
- (5) If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 8th day of July, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge