

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

BERNARD EDWARD KRETLOW,

Plaintiff,

v.

SGT. DAHLSTROM and OFFICER ALLEN,

Defendants.

OPINION & ORDER

15-cv-571-jdp

Pro se plaintiff Bernard Edward Kretlow is currently incarcerated at the Wisconsin Resource Center in Winnebago, Wisconsin. He was previously incarcerated at the Redgranite Correctional Institution. He has filed a complaint under 42 U.S.C. § 1983, alleging that defendants Sgt. Dahlstrom and Officer Allen, who are employed at the Redgranite Correctional Institution, outed him as an informant to other inmates, endangering him while he lived at that facility. Dkt. 1.

Plaintiff proceeds in *forma pauperis*, Dkt. 2, and has made an initial partial payment of the filing fee as directed by the court. As a next step, I must screen his complaint and dismiss any portion that is legally frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915, 1915A. In addressing any pro se litigant's complaint, I must read the allegations of the complaint generously. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After considering plaintiff's allegations, I conclude that plaintiff has stated an Eighth Amendment claim and a First Amendment claim.

ALLEGATIONS OF FACT

I draw the following facts from plaintiff's complaint and attachments.

While plaintiff was incarcerated at the Redgranite Correctional Institution, he acted as an informant against other inmates and against staff. In particular, he reported defendant Officer Allen for passing items to inmates in segregation.

Plaintiff alleges that on November 8, 2014, while he was located in the segregation unit, defendants Sgt. Dahlstrom and Officer Allen came by his cell. Dahlstrom said to plaintiff: "I heard you been snitching; just don't tell on me for anything," loudly enough for other inmates to hear. Plaintiff alleges that the other inmates began yelling that they were going to "get" plaintiff, pass on the message to general population inmates, and have him killed.

Plaintiff reported the incident to the complaint examiner's office at Redgranite, which dismissed his complaint. Plaintiff is currently at the Wisconsin Resource Center. He asks to be sent to a different prison when he returns to the Department of Corrections.

ANALYSIS

Plaintiff alleges that defendants violated the Eighth Amendment by exposing him to a risk of harm at the hands of other inmates. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To state a claim, he must allege that defendants were "deliberately indifferent" to "a substantial risk of serious harm." *Id.* at 834 (1994). Mere negligence or inadvertence is not enough. *Pinkston v. Madry*, 440 F.3d 879, 889 (7th Cir. 2006). But "[o]nce prison officials know about a serious risk of harm, they have an obligation 'to take reasonable measures to abate

it.” *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008) (quoting *Borello v. Allison*, 446 F.3d 742, 747 (7th Cir. 2006)).

In this case, plaintiff alleges that he is at risk of physical violence from other inmates for serving as an informant. His risk of harm if he is exposed to the inmates who know and have threatened him is both objectively serious and substantial. Dahlstrom actually caused the risk by disclosing to other inmates that plaintiff was an informant. Allen was also present and knew of the risk that Dahlstrom created. Plaintiff had reported on Allen, and the facts suggest that Allen condoned Dahlstrom’s conduct. Neither defendant acted to abate the risk that they created. Accordingly, plaintiff has stated an Eighth Amendment claim against both defendants and will be granted leave to proceed against them.

Plaintiff’s complaint also supports a claim for retaliation under the First Amendment. Inmates have a right to free speech, limited only by restrictions that are “reasonably related to legitimate penological interests.” *Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989) (citing *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Retaliation against an inmate for exercising his right to speak is unconstitutional, even if the retaliatory conduct would not independently violate the Constitution. *Zimmerman v. Tribble*, 226 F.3d 568, 573 (7th Cir. 2000). To prevail on a retaliation claim, plaintiff must show that: (1) he engaged in protected activity; (2) he suffered a deprivation that would likely deter protected activity in the future; and (3) the activity was “at least a motivating factor” in defendants’ decision to retaliate. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Plaintiff alleges that he engaged in protected speech by informing on prison staff, including on Allen. He alleges that after Dahlstrom and Allen somehow found out, they

endangered plaintiff by announcing that plaintiff had “been snitching.” Plaintiff has stated a retaliation claim and will be granted leave to proceed against both defendants.

ORDER

IT IS ORDERED that:

1. Plaintiff is GRANTED leave to proceed on Eighth Amendment failure to protect claims and on First Amendment retaliation claims against defendants Sgt. Dahlstrom and Officer Allen.
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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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.
3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court’s copy that he has sent a copy to defendants or to defendants’ lawyer.
4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy 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 his failure to prosecute it.

Entered June 1, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge