

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

MATTHEW DENNIS,

Plaintiff,

v.

OPINION & ORDER

15-cv-275-jdp

KURT PICKNELL, WALWORTH COUNTY,
and MICHAEL DITTMAN,

Defendants.

Plaintiff Matthew Dennis, a prisoner in the custody of the Wisconsin Department of Corrections currently housed at the Columbia Correctional Institution, has filed a complaint alleging that officials from the DOC and from Walworth County failed to protect him from harm while he was housed at the Walworth County Jail. He 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 the complaint and dismiss any portions that are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 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 considering plaintiff's allegations, I will allow him to proceed on Eighth Amendment failure to protect and state law negligence claims against defendants.

ALLEGATIONS OF FACT

Plaintiff Matthew Dennis is a prisoner in the custody of the Wisconsin Department of Corrections at the Columbia Correctional Institution. During the events in question, he was housed at the Walworth County Jail, although he was still a DOC inmate. I understand plaintiff to be saying that DOC inmates were intermingled with Walworth County inmates, which led to tension and conflicts between the two groups, and that jail officials were aware of this. As a DOC inmate, plaintiff was supposed to be housed separately from Walworth County prisoners, but the county chose to keep the prisoners together.

On October 13, 2014, plaintiff was attacked by inmate Larry Shannen, a Walworth County prisoner. Shannen hit plaintiff in the head and choked him, causing plaintiff to lose consciousness. Jail staff did not respond quickly enough to prevent plaintiff from being harmed. Plaintiff now suffers chronic headaches, neck pain, and sleep deprivation.

Plaintiff believes the lack of separation put him in danger. Plaintiff filed grievances in both the jail and DOC system. Defendants CCI Warden Michael Dittman and Walworth County Sheriff Kurt Picknell denied plaintiff's grievances.

ANALYSIS

I understand plaintiff to be bringing Eighth Amendment and state law negligence claims against defendants for not properly protecting him from inmates at the Walworth County Jail.

A. Eighth Amendment

The Eighth Amendment requires prison officials "to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (citations

omitted). An “official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Gillis v. Litscher*, 468 F.3d 488, 491 (7th Cir. 2006) (quoting *Farmer*, 511 U.S. at 847). To state a failure to protect claim, a claimant must allege: “(1) that he was incarcerated under conditions posing a substantial risk of serious harm and (2) that [the prison official] acted with deliberate indifference to that risk.” *Santiago v. Wells*, 599 F.3d 749, 758 (7th Cir. 2010).

A jail or prison official may be named as a defendant in his or her individual capacity in a claim under 42 U.S.C. § 1983 when the official personally participated in or had personal knowledge of the types of acts or omissions that form the basis of the claim. *See Antonelli v. Sheahan*, 81 F.3d 1422, 1428 (7th Cir. 1996). A senior official who was not personally involved in the acts or omissions complained of nonetheless may be liable in his individual capacity if he can be expected to have either known of or participated in creating systemic inadequate conditions. *Id.* at 1428-29 (holding that because sheriff and director of jail could have been expected to have personal responsibility for alleged systemic violations, claims regarding those violations could not be dismissed on the ground that deliberate indifference of defendants was not adequately pleaded); *Sanders v. Sheahan*, 198 F.3d 626, 629 (7th Cir. 1999) (holding that “defendants such as the Sheriff and the Director of the Jail can realistically be expected to know about or participate in creating systematic jail conditions”). Here, it is reasonable to assume that defendant Sheriff Picknell was responsible for overseeing the general conditions of confinement at the jail and maintaining the policies that placed plaintiff in danger. Plaintiff also seems to be saying that Picknell was aware of the

tension between DOC and Walworth County inmates that created the danger. Therefore, I will allow plaintiff to proceed on an Eighth Amendment claim against Picknell.

As for defendant Dittman, he oversees a separate DOC prison; it is not clear why plaintiff believes that Dittman should be held responsible for the policies at the Walworth County Jail. He cannot be held liable for failing to protect him from the attack itself because there is no indication that he was aware of the danger facing plaintiff before the attack. But plaintiff also alleges that Dittman denied his grievance *after* the attack, which suggests that Dittman turned a blind eye to the danger facing plaintiff following the attack. At this point I can reasonably assume that Dittman could have forced a transfer or taken other action in response to the danger made clear by the attack, so I will allow plaintiff to proceed on an Eighth Amendment claim against Dittman as well.

Plaintiff also names Walworth County as a defendant, so I understand him to be bringing a *Monell*-type claim against the county. Municipal entities such as Walworth County may be held liable under § 1983 if the municipality has a policy that causes a constitutional violation. *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658, 692 (1978). “Official municipal policy includes the decisions of a government’s lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.” *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011). Plaintiff seems to be alleging that the decision to house DOC and county prisoners together despite the conflicts between them was a policy choice made by county decisionmakers, including Picknell, so I will allow plaintiff to proceed on a *Monell* claim against the county.

Plaintiff also seems to be saying that officers at the scene of the October 13, 2014 attack did not step in quickly enough to prevent harm to plaintiff. However, he does not

name as defendants any of the officers present at the scene, so he cannot bring Eighth Amendment claims against any of these officers.

B. Negligence

I understand plaintiff to be alternatively alleging that defendants Picknell and Dittman were negligent in keeping him in dangerous conditions. His state law negligence claims are “so related” to his federal claims against these defendants that “they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). To prevail on a claim for negligence in Wisconsin, plaintiff must prove that defendants breached their duty of care and he suffered injury as a result. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865. It is reasonable to infer at this stage that these defendants were negligent for the same reasons supporting plaintiff’s Eighth Amendment claims, so I will allow plaintiff to proceed on his negligence claims.

ORDER

IT IS ORDERED that:

1. Plaintiff Matthew Dennis is GRANTED leave to proceed on the following claims:
 - a. Eighth Amendment failure to protect claims against defendants Michael Dittman, Kurt Picknell, and Walworth County.
 - b. State law negligence claims against defendants Dittman and Picknell.
2. 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 Dittman. 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 defendants.

3. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendants Picknell and Walworth County. Plaintiff should not attempt to serve defendants on his own at this time.
4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendants, he should serve the lawyers 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.
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.

Entered November 2, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON

District Judge