

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

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BRIAN LAWRENCE,

Plaintiff,

v.

CHRIS BUESGEN and JEFFREY PUGH,

Defendants.

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OPINION & ORDER

15-cv-230-jdp

Plaintiff Brian Lawrence, a prisoner in the custody of the Wisconsin Department of Corrections at the Stanley Correctional Institution, has filed a complaint alleging that prison officials failed to protect him from an assault by his cellmate even though plaintiff warned staff about the danger. 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 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 claims against defendants.

## ALLEGATIONS OF FACT

Plaintiff Brian Lawrence is a prisoner in the custody of the Wisconsin Department of Corrections at the Stanley Correctional Institution (SCI). On June 5, 2011, plaintiff, who was 68 years old at the time, was attacked by his 28-year-old cellmate, Hue Lee. Plaintiff suffered a lacerated scalp, fractured eye socket, damaged sinuses, and memory loss.

From the start of their time as cellmates, plaintiff and Lee did not get along. Plaintiff complained to correctional officers on “more than three occasions” that Lee “was very aggressive and tried to start fights with him,” including on the day of the attack, because plaintiff “could feel the problem and see that Mr. Lee was acting ‘anxious and irate.’” The officers would not move plaintiff or Lee to another cell. Plaintiff then informed supervisory officials, including defendants Security Director Chris Buesgen and Warden Jeffery Pugh, but neither responded. Plaintiff later discovered that Lee had been incarcerated for battery by a prisoner. Still, prison officials did not take action to prevent the June 5, 2011 attack.

## ANALYSIS

I understand plaintiff to be alleging that defendant prison officials violated his Eighth Amendment rights by failing to protect him from inmate Lee. 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 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). Plaintiff chooses not to name as defendants the correctional officers who worked directly on his unit. Rather, he names higher level officials Security Director Buesgen and Warden Pugh. Plaintiff shows that they were aware of the problem because he sent them letters about it. At this point I can infer that these defendants were in position to do something to rectify the problem but failed to do so, so I will allow plaintiff to proceed on failure to protect claims against Buesgen and Pugh. Going forward, plaintiff will have to show that these officials had a duty to help plaintiff, had the authority to grant his requests, and did not defer decisions to other staff members. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) (“Public officials do not have a free-floating obligation to put things to rights. . . . Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another’s job.”).

## ORDER

IT IS ORDERED that:

1. Plaintiff Brian Lawrence is GRANTED leave to proceed on Eighth Amendment failure to protect claims against defendants Chris Buesgen and Jeffery Pugh.
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 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 on behalf of 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 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.
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. 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 November 2, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge