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

ROBERT J. ARTIS,

Plaintiff,

v.

PRICE, HIMBA, ANDERSON, GIROUX,
KIEM, BOHNSACK, BENDER, TAYOR and
J[OH]N AND JANE DOE,

Defendants.

OPINION AND ORDER

19-cv-303-wmc

Pro se plaintiff Robert J. Artis, an inmate in the custody of the Wisconsin Department of Corrections ("DOC"), housed at Columbia Correctional Institution ("Columbia") during all times relevant to his complaint, alleges that defendants, various employees of the DOC, employed at Columbia, violated his Eighth Amendment rights by failing to protect him from self-harm and denying him water and other basic necessities while held on observational status. (Compl. (dkt. #1).) Because Artis is incarcerated and is seeking redress from governmental employees, the Prison Litigation Reform Act ("PLRA") requires the court to screen his complaint and dismiss any portion that is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. For the reasons that follow, the court will grant plaintiff leave to proceed on (1) an Eighth Amendment failure to protect claim against defendants Himba and Price and (2) an Eighth Amendment conditions of confinement claim against defendants Anderson and Giroux. The court, however, will deny plaintiff leave to proceed against defendants Klem,

Bohnsack, Bender and Taylor.[1]

ALLEGATIONS OF FACTS[2]

Plaintiff Robert J. Artis is an inmate, currently incarcerated at the Wisconsin Secure Program Facility, but previously incarcerated at Columbia during the time period relevant to his complaint, July 27, 2018, to August 2, 2018. For all times relevant to his complaint, defendants were employed with the DOC at Columbia. Price was a sergeant; Anderson was a captain; Giroux was a lieutenant and unit manager; Himba, Klem, Bohnsack, Bender and Taylor were correctional officers.[3]

The events giving rise to plaintiff's claims occurred between July 27 and August 2, 2018. At approximately 9:00 a.m. on the morning of July 27, Artis alleges that he began to have suicidal thoughts. At around 10:00 a.m., Correctional Officer Himba was passing medications and handed Artis a glass nasal spray bottle. Artis alleges that he told her he was feeling suicidal and asked that she call the psychiatric services unit ("PSU") or a

---

[1] With his complaint, plaintiff also filed a motion for preliminary injunction. (Dkt. #3.) At the time he filed his complaint and the motion for preliminary injunction, however, plaintiff was no longer housed at Columbia, and, therefore, there is no ongoing violation of his rights or threat of violation to his rights by the defendants named in this lawsuit. As such, the court will deny the motion for preliminary injunction as moot. *See Maddox v. Love*, 655 F.3d 709, 716 (7th Cir. 2011) (holding that prisoner's claim for injunctive relief was moot because "he is no longer an inmate at Lawrence" and "has not shown a realistic possibility that he will again be incarcerated in the same state facility").

[2] In addressing any *pro se* litigant's complaint, the court must read the allegations of the complaint generously, resolving ambiguities and making reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

[3] Plaintiff also purports to name J[oh]n and Jane Doe, unidentified correctional officers, as a defendant or defendants. If during the course of this lawsuit, plaintiff discovers the identity of other correctional officers implicated in his claims, he may seek leave to amend his complaint to add them as defendants.

lieutenant. Himba asked Artis to return the glass bottle, but Artis refused, stating, "I'm go[ing] to use it to cut myself." (Compl. (dkt. #1) ¶ 14.) Himba allegedly responded, "okay," and walked away, without notifying PSU or the next shift about Artis's report of suicidal thoughts and threat to cut himself. (*Id.*)

At about 1:00 p.m., Sargent Price arrived at plaintiff's door and asked him to return the spray bottle. Artis allegedly responded that "he was feeling suicidal an[d] thinking about us[]ing the bottle to cut himself." (*Id.* ¶ 15.) Price responded, "I don't care[. I]'m about to go home in a[n] hour and I w[o]n't be back till Tuesday so go ahead." (*Id.*) Price too left without telling PSU or the next shift about this exchange.

At about 3:00 p.m., Artis used the glass bottle to cut himself and then notified the next shift correctional officer Thiery, who is not named as a defendant, that he had begun to cut himself and was feeling suicidal. Thiery alerted his supervisor, defendant Captain Anderson, who responded by pulling Artis out of his cell and escorting him to the health services unit ("HSU") to have his cut treated. While at the HSU, Artis spoke with Dr. Norge, a mental health treatment provider, about his suicidal thoughts, and Dr. Norge placed Artis on observational status.

That day, Captain Anderson placed Artis in limited property status in D-S-1, removing all of his clothing and directed correctional officers to shut off the water to his cell and to keep the bright light turned on at all times.

On July 30, defendant Lieutenant Giroux, who was the acting unit manager for D-S-1, was made aware of the fact that plaintiff was denied water, clothing, bed linens and hygiene supplies, that his room was "freezing cold due to the A/C being on," and that the

bright lights were on 24 hours a day. Giroux allowed Artis to be housed in these conditions until August 2, 2018. During the period from July 27 to August 2, Artis further alleges that correctional officers Klem, Bohnsack, Bender and Taylor "all took part in denying me water, clothes, bed linen[s] [and] hygiene [supplies], turning off the light[s] all at the ordering of their supervisors." (*Id.* ¶ 20.)

OPINION

I. Eighth Amendment Failure to Protect Claim

Plaintiff seeks to pursue an Eighth Amendment claim against defendants Himba and Price based on their failure to respond to his threats of self-harm. An inmate may prevail on a claim under the Eighth Amendment by showing that the defendant acted with "deliberate indifference" to a "substantial risk of serious harm" to his health or safety. *Farmer*, 511 U.S. at 836. Significant self-harm constitutes "serious harm." *See Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010). Deliberate indifference to a risk of self-harm is present when an official is subjectively "aware of the significant likelihood that an inmate may imminently" harm himself, yet "fail[s] to take reasonable steps to prevent the inmate from performing the act." *Pittman ex rel. Hamilton v. Cty. of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (citations omitted); *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.").

Here, plaintiff alleges that he told both Correctional Officer Himba and Sergeant Price that he was feeling suicidal and that he was going to use the glass nasal spray bottle

to cut himself. He further alleges that he asked them to contact PSU or tell a supervisor. Accepting these allegation as true, plaintiff has adequately alleged an Eighth Amendment failure to protect claim against both defendants.

II. Eighth Amendment Conditions of Confinement Claim

Plaintiff's allegations also concern the conditions of his confinement while held in observational status for six days from July 27 to August 2, 2018. The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon prison officials the duty to provide prisoners "humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). To constitute cruel and unusual punishment, however, conditions of confinement must be extreme: a general "lack of due care" by prison officials does not rise to the level of an Eighth Amendment violation because "it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

To demonstrate that prison conditions violated the Eighth Amendment, a plaintiff must allege facts that satisfy a test involving both an objective and subjective component. *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994). The objective analysis focuses on whether prison conditions were sufficiently serious so that "a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities," *Farmer*, 511 U.S. at 834, or "exceeded contemporary bounds of decency of a mature, civilized society," *Lunsford*, 17 F.3d at 1579. The subjective component requires an allegation that prison officials acted wantonly and with deliberate indifference to a risk of serious harm to plaintiff. *Id.*

Artis's conditions of confinement claim involves: (1) his water being shut off in his cell; (2) denial of clothes and linens in a cold cell with air conditioning; (3) denial of "hygiene" supplies; and (4) having bright lights on 24-hours a day. The court will address each of these alleged conditions, individually and in combination. *See Budd v. Motley*, 711 F.3d 840, 842-43 (7th Cir. 2013) ("We examine each of these, mindful that conditions of confinement, even if not individually serious enough to work constitutional violations, may violate the Constitution in combination when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need." (internal citations and quotation marks omitted)).

First, with respect to water, Artis alleges that when Captain Anderson placed him in an observational cell, he ordered correctional officers to shut off the water in his cell. (Compl. (dkt. #1) ¶ 18.) While later paragraphs in his complaint alleged that he was "denied water" (*id.* ¶¶ 19, 20), in light of his allegation that Anderson ordered the water to be shut off in his cell, the court infers that he was denied access to running water in his cell sink and/or toilet, but that he was not denied access to water for purposes of drinking. Denying Artis access to running water, especially considering that he also alleges that he was denied "hygiene" supplies, which the court will assume covers supplies necessary for Artis to clean himself and his cell, is sufficient to satisfy the objective element of an Eighth Amendment conditions of confinement claim. *See Budd*, 711 F.3d at 843 (holding that prisoner's "allegations of unhygienic conditions, when combined with the jail's failure to provide detainees with a way to clean for themselves with running water or other supplies, state a claim for relief") (citing *Vinning–El v. Long*, 482 F.3d 923, 924-25 (7th Cir.2007)

(reversing summary judgment where prisoner was held for six days without sanitation items in cell contaminated with human waste and in which sink and toilet did not work); *Johnson v. Pelker*, 891 F.2d 136, 139-40 (7th Cir. 1989) (reversing summary judgment where prisoner was denied cleaning supplies and confined for three days to cell that was smeared with human waste and lacked running water)).

Second, plaintiff also alleges that he was denied clothing and bed linens. "Typically, a conditions of confinement claim premised on a denial of adequate clothing involves inadequate clothing to deal with extreme conditions." *Carter v. Meisner*, No. 12-CV-574-WMC, 2014 WL 5580917, at *8 (W.D. Wis. Oct. 31, 2014), *aff'd*, 639 F. App'x 379 (7th Cir. 2016) (citing *Mays v. Springborn*, 575 F.3d 643, 648 (7th Cir. 2009); *Johnson v. Lappin*, 264 F. App'x 520, 523, 2008 WL 397575, at *3 (7th Cir. Feb. 14, 2008). Here, plaintiff's allegation that he was denied all clothing and bed linens, coupled with his allegation that the cell was cold, given that the air conditioning was on, also is sufficient to satisfy the objective prong of a conditions of confinement claim.

Third, plaintiff alleges that he was denied "hygiene." While plaintiff fails to describe in detail what items he was denied, the court will infer that he was denied soap, a toothbrush and toothpaste. This allegation, especially when combined with his allegation that he was denied running water, is also sufficient to satisfy the objective prong of an Eighth Amendment claim. *See Johnson*, 264 F. App'x at 523 (holding that plaintiff had alleged conditions of confinement claim where he alleged that he was confined "in a frigid dry cell for six days in early March wearing only his underwear and without bedding for warmth, water, or basic hygiene items"); *James v. O'Sullivan*, 62 F. App'x 636, 639 (7th Cir.

2003) ("James' allegations about being denied soap, a toothbrush, and toothpaste, if true, may satisfy the objective component of the Eighth Amendment inquiry.").

Fourth, Artis complains about having "bright lights" on 24-hours a day during the course of his observational status. Absent additional allegations as to how the constant illumination impacted plaintiff, it is less clear that this condition, viewed in isolation, would constitute a violation of the Eighth Amendment. *See Dvorak v. Racine Cty. Jail Sheriff*, No. 07-C-181, 2007 WL 1217693, at *6 (E.D. Wis. Apr. 23, 2007) ("An environment of constant illumination may violate the Eighth Amendment if it causes sleep deprivation or leads to other serious physical or mental health problems."); *King v. Frank*, 371 F. Supp. 2d 977, 984-85 (W.D. Wis. 2005)(holding that a condition of confinement such as constant illumination violates the Eighth Amendment if it denies the inmate "the civilized measure of life's necessities"). Still, in light of the other allegations, plaintiff has sufficiently alleged that the combination of conditions satisfies the objective prong of this Eighth Amendment claim.

Plaintiff, however, also must allege sufficient facts to satisfy the subjective prong of that test, requiring that each of the named defendants acted with deliberate indifference to the risk of serious harm to plaintiff. *See Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional violation."). Plaintiff's allegations are sufficient to implicate Captain Anderson who placed him on "limited property status," ordered that running water be turned off and also ordered constant illumination. Furthermore, plaintiff alleges that Lieutenant Giroux learned of the conditions of plaintiff's confinement three days later on

July 30, 2018, and did nothing to address these issues during the next three days until Artis's release on April 2. The court finds the allegations as to Anderson and Giroux sufficient to satisfy the subjective prong.

Plaintiff also seeks to assert claims against four correctional officers who "all took part in denying me water, clothes, bed linen[s] [and] hygiene [supplies], turning off the light[s] all at the ordering of their supervisors." (*Id.* ¶ 20.) This allegation is too general and vague to establish that each of these four correctional officers were aware of his conditions of confinement and were in a position to address his needs. As such, the court will deny plaintiff leave to proceed against Klem, Bohnsack, Bender and Taylor, although without prejudice to plaintiff amending his complaint, adding additional, specific allegations as to each of these proposed defendants to sufficiently allege the subjective prong of an Eighth Amendment conditions of confinement claim as to each.

ORDER

IT IS ORDERED that:

1) Plaintiff Robert J. Artis is GRANTED leave to proceed on an Eighth Amendment failure to protect claim against defendants Himba and Price and an Eighth Amendment conditions of confinement claim against defendants Anderson and Giroux.

2) Plaintiff is DENIED leave to proceed against defendants Klem, Bohnsack, Bender, Taylor and J[oh]n or Jane Doe. These defendants are dismissed from this lawsuit.

3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer 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 the 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) Pursuant to an informal 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 defendants. Under the agreement, the Department of Justice will have 60 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 defendants.

6) 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.

7) Plaintiff's motion for preliminary injunction (dkt. #3) is DENIED AS MOOT.

Entered this 27th day of April, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge