

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

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DEMITRIUS COOPER,

Plaintiff,

v.

OPINION & ORDER

SERGEANT MEYER, CO GORMAN, and  
CAPTAIN SABISH,

16-cv-526-jdp

Defendants.

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Pro se plaintiff Demetrius Cooper is incarcerated at the Waupun Correctional Institution. He has filed a proposed civil action under 42 U.S.C. § 1983, alleging that his Eighth Amendment rights were violated by defendants Sergeant Meyer, Officer Gorman, and Captain Sabish of the Waupun Correctional Institution. Plaintiff alleges that Meyer used excessive force when restraining plaintiff with handcuffs, that Gorman and Sabish failed to intervene despite witnessing the use of excessive force, and that all three defendants demonstrated deliberate indifference to plaintiff's medical need caused by Meyer's excessive force.

Plaintiff has paid an initial partial payment of the filing fee as previously directed by the court. Accordingly, the next step in this case is for the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 & 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, 520-21 (1972). After reviewing the complaint with this principle in mind, I will allow plaintiff to move forward with his claims.

## ALLEGATIONS OF FACT

Plaintiff alleges the following facts. On February 2, 2016, plaintiff was housed in segregation at the Waupun Correctional Institution. Plaintiff asked defendant Sergeant Meyer to place him in clinical observation due to his suicidal thoughts. Meyer told plaintiff that he did not “have time for this suicidal bullshit.” Dkt. 1, at 8. As Meyer walked away, plaintiff said that he may harm himself if left alone in his cell.

At this, Meyer “became extremely upset” and called another officer to bring restraints. *Id.* at 8. Defendant Officer Gorman arrived with leg restraints. Meyer asked plaintiff to place his hands behind his back in the trap door, which plaintiff did. As Meyer placed handcuffs on plaintiff, he twisted plaintiff’s wrist, slammed plaintiff’s hand against the door, and secured the handcuffs tightly. As a result, plaintiff felt the handcuffs “crushing into [his] bone” and causing his hands to become numb. *Id.* at 8.

Plaintiff “yell[ed] in agony,” told Meyer about the “unbearable” pain, and asked him to loosen the handcuffs. *Id.* at 8. Meyer refused and instead instructed plaintiff to kneel while Gorman placed leg restraints on him. Plaintiff complied while continuing to complain that the tight handcuffs were causing him pain. Meyer explained that he was trained to apply handcuffs this way.

Meyer and Gorman used a second set of handcuffs to secure plaintiff to the strip cage door. They left plaintiff there, secured by two sets of handcuffs and one set of leg restraints, for 90 minutes. Plaintiff continued to complain of pain in his wrists and request that the handcuffs be loosened. Captain Sabish inspected the handcuffs during this time, noted that plaintiff was “only bleeding a little bit,” and instructed Meyer and Gorman to leave plaintiff there. *Id.* at 9.

After two hours, Gorman approached plaintiff, and plaintiff asked that a nurse review his injuries. Gorman, Meyer, and Sabish refused to take plaintiff directly to a nurse. Meyer instructed plaintiff to complete a health service request. Gorman returned plaintiff to his cell and removed the handcuffs and leg restraints.

## ANALYSIS

Plaintiff brings three Eighth Amendment claims under 42 U.S.C. § 1983: first, against Sergeant Meyer for using excessive force while restraining him; second, against Correctional Officer Gorman and Captain Sabish for failing to intervene; and third, against all three defendants for demonstrating deliberate indifference to his resulting medical need.

To state a claim for relief under 42 U.S.C. § 1983, plaintiff must allege that: (1) he was deprived of a right secured by the Constitution or laws of the United States; and (2) the deprivation was done by a person or persons acting under color of state law. *Buchanan-Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009). The Eighth Amendment protects prisoners from cruel and unusual punishment, which includes “[t]he ‘unnecessary and wanton infliction of pain’ on a prisoner.” *Lewis v. Downey*, 581 F.3d 467, 475 (7th Cir. 2009) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)).

The inquiry for plaintiff’s excessive force claim is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 7 (1992); *see also Guitron v. Paul*, 675 F.3d 1044, 1046 (7th Cir. 2012). The analysis has both an objective and a subjective component: whether, in the context of contemporary standards of decency, the alleged wrong was objectively harmful enough to establish a constitutional violation and whether the officers’

subjective motivations were malicious and sadistic. *Hudson*, 503 U.S. at 8. Plaintiff states that when Meyer placed the handcuffs on plaintiff, it harmed him by causing him pain and bleeding. Plaintiff alleges that Meyer did so knowingly, in retribution for plaintiff's request for clinical observation. I conclude that plaintiff may proceed on this claim against defendant Meyer.

To state his claims for failure to protect, plaintiff must allege that Gorman and Sabish knew that Meyer was using excessive force against him and that Gorman and Sabish had a realistic opportunity to intervene to prevent the harm from occurring but did not do so. *See Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). Here, plaintiff alleges that Gorman was present when Meyer placed the handcuffs on him and he cried out, but Gorman did nothing to stop Meyer or to loosen the handcuffs upon plaintiff's request. And plaintiff alleges that Sabish heard plaintiff's complaints of pain, looked at plaintiff's wrists, acknowledged that they were bleeding, but refused to loosen the handcuffs. I conclude that plaintiff may proceed on these claims against defendants Gorman and Sabish.

Finally, plaintiff claims that all three defendants were deliberately indifferent to plaintiff's medical need resulting from Meyer's use of excessive force. To state this claim, plaintiff must allege that the defendants were aware of a substantial risk of harm to plaintiff and consciously failed to take reasonable measures to help him. *Gevas v. McLaughlin*, 798 F.3d 475, 480 (7th Cir. 2015) (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Pain may qualify as a harm. *Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1039-40 (7th Cir. 2012). Delay in treatment may constitute deliberate indifference if the delay unnecessarily prolonged plaintiff's pain. *Id.* at 1040. Here, plaintiff alleges that when he requested immediate medical attention after complaining of pain for over two hours, the defendants denied it. Although

Meyer instructed plaintiff to complete a health service request, plaintiff alleges that this procedure caused him to wait four days to receive medical treatment. I conclude that plaintiff may proceed on these claims against defendants Meyer, Gorman, and Sabish.

Plaintiff has also filed two motions for assistance recruiting counsel. Dkt. 4 and Dkt. 8. I will deny these motions without prejudice to plaintiff renewing his request later in this case. Litigants in civil cases do not have a constitutional right to a lawyer, and I have discretion to determine whether assistance recruiting counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). To prove that assistance recruiting counsel is necessary, this court generally requires that a pro se plaintiff: (1) provide the names and addresses of at least three lawyers who decline to represent him in this case; and (2) demonstrate that his is one of those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds his demonstrated ability to prosecute it. *Id.* at 655; *see also Young v. Cramer*, No. 13-cv-077, 2013 WL 5504480, at \*2 (W.D. Wis. Oct. 3, 2013).

Plaintiff has provided no evidence that he has attempted to recruit legal representation on his own. This is reason enough to deny plaintiff's motion. *See Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). Even if this requirement was met, the second requirement for assistance recruiting counsel requires plaintiff to demonstrate that the legal and factual difficulty of this case exceeds his ability to prosecute it. It is too early to tell whether plaintiff's Eighth Amendment claims will outstrip his litigation abilities. This case may not pass the relatively early stage in which defendants may file a motion for summary judgment based on a statute of limitations or exhaustion of administrative remedies. Such a motion could result in dismissal of this case before it

advances deep into the discovery stage of the litigation. Should the case pass the exhaustion stage, and should plaintiff continue to believe that he is unable to litigate the suit himself, then he should renew his motion.

## ORDER

IT IS ORDERED that:

1. Plaintiff Demetrius Cooper is GRANTED leave to proceed on the following claims:
  - a. An Eighth Amendment excessive force claim against defendant Meyer.
  - b. Eighth Amendment failure to protect claims against defendants Gorman and Sabish.
  - c. Eighth Amendment medical care claims against defendants Meyer, Gorman, and Sabish.
2. Plaintiff's motions for assistance recruiting counsel, Dkt. 4 and Dkt. 8, are DENIED without prejudice to plaintiff refile later in the case.
3. 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.
4. 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' attorney.
5. 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.
6. If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and the

defendants or the court are unable to locate him, his claims may be dismissed for his failure to prosecute them.

Entered September 13, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge