

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

JERMICHAEL CARROLL,

Plaintiff,

OPINION and ORDER

17-cv-137-bbc

v.

SERGEANT CHAPMAN, SERGEANT ROYCE,
LINDSY WALKER, J. GOHDE, KATHY WHALEN,
ISAAC HART, NURSE JOHN DOE #1,
MELISSA THORNE, TRISHA ANDERSON
and SGT. JUDD,

Defendants.

Pro se plaintiff and prisoner Jermichael Carroll has filed a complaint regarding his conditions of confinement at the Columbia Correctional Institution, which is in Portage, Wisconsin. Plaintiff alleges that since August 2016 he has been forced to sleep on a “deplorable” mattress on a concrete floor, even though he has an injury from a bullet that is still in his body (he does not say where). He says that he is in pain all of the time, especially when he has to get down on the floor or stand up after lying on the mattress.

I understand plaintiff to be raising the following claims:

(1) defendants Chapman, Royce and Judd (correctional officers at the prison) and defendant Lindsay Walker (the unit manager) have refused his requests to transfer him to a different cell with a raised bed or provide a better mattress, in violation of the Eighth

Amendment;

(2) when plaintiff complained to defendant Walker, defendant J. Gohde (the health services unit manager), and defendants Kathy Whalen, Melissa Thorne, Trisha Anderson and Jane Doe (nurses at the prison) about his pain, they refused to refer him to a doctor or provide other medical care, in violation of the Eighth Amendment;

(3) defendant Isaac Hart (a grievance examiner) rejected plaintiff's grievances on procedural grounds, in violation of the due process clause.

In addition to these claims, plaintiff includes allegations that unnamed prison staff took his "orthopedic shoes." However, I do not understand plaintiff to be raising a separate claim about this issue because he does not tie the allegation to a particular defendant, not even a John or Jane Doe.

Plaintiff has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. § 1915(e)(2) and § 1915A. For the reasons explained below, I am allowing plaintiff to proceed on the first two claims, but I am dismissing the claim against defendant Hart for plaintiff's failure to state a claim upon which relief may be granted.

OPINION

A. Refusal to Accommodate Pain

Plaintiff's claim against defendants Chapman, Royce Judd and Walker arises under the Eighth Amendment to the United States Constitution. A prison official may violate this

right if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff's claim has three elements:

- (1) Does plaintiff need medical treatment?
- (2) Do defendants know that plaintiff needs treatment?
- (3) Despite their awareness of the need, are defendants consciously failing to take reasonable measures to provide the necessary treatment?

As to the first element, plaintiff alleges that he suffers from constant pain, which is aggravated significantly because he must sleep on a hard mattress on the floor. Pain can qualify as a serious medical need, Walker v. Benjamin, 293 F.3d 1030, 1039-40 (7th Cir. 2002), so plaintiff has adequately alleged this element of the claim.

As to the second element, plaintiff alleges that he complained to each of these four defendants about the pain caused by his sleeping conditions, so he has adequately alleged that each defendant was aware that he had a serious medical need,

As to the third element, plaintiff alleges that defendants refused to give him a raised bed or a better mattress or otherwise take any action to help him, so he has adequately alleged that defendants consciously refused to take reasonable measures.

At summary judgment or trial, plaintiff will have to come forward with specific evidence to support each element of this claim. In particular, plaintiff will have to show that he needs the accommodations he is requesting and that defendants are refusing to help him get those accommodations, even though defendants have the ability and the authority to provide them. Miller v. Harbaugh, 698 F.3d 956, 962 (7th Cir. 2012) (prison officials cannot be held liable under Eighth Amendment “if the remedial step was not within their power”).

B. Refusal to Treat Pain

Plaintiff’s claim that several healthcare professionals refused to treat his pain is governed by the same Eighth Amendment analysis as the claim regarding the failure to provide a mattress or a raised bed. Again, the question is whether each defendant knew that plaintiff needed medical treatment, but they consciously refused to take reasonable measures to help him. Because plaintiff alleges that defendants Walker, Gohde, Whalen, Thorne, Anderson and Doe refused to refer plaintiff to a doctor and disregarded his health service

requests, he has stated a claim upon which relief may be granted under the Eighth Amendment.

C. Rejection of Grievances

Plaintiff alleges that defendant Hart rejected his grievances “by citing a procedural error that didn’t exist,” in violation of both prison rules and the due process clause. This allegation fails to state a claim upon which relief may be granted.

First, violations of prison rules cannot provide the basis for a civil action in this court, so I do not consider whether defendant Hart applied those rules correctly. Second, the Constitution does not require prisons to enact grievance procedures or to handle grievances in a particular way. Kervin v. Barnes, 787 F.3d 833, 835 (7th Cir. 2015) (“[T]he inadequacies of the grievance procedure itself . . . cannot form the basis for a constitutional claim.”); Owens v. Hinsley, 635 F.3d 950, 953 (7th Cir. 2011) (“Prison grievance procedures are not mandated by the First Amendment and do not by their very existence create interests protected by the Due Process Clause, and so the alleged mishandling of Owens's grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim.”). If a prison official’s misconduct prevents a prisoner from completing the grievance process, then the prisoner may be excused from the requirement in 42 U.S.C. § 1997e(a) to exhaust his administrative remedies, Kervin, 787 F.3d at 835, but that is not an issue that the court considers in a screening order. If defendants later seek dismissal of any of plaintiff’s claims under § 1997e(a), plaintiff is free to raise any relevant

arguments about the grievance process at that time.

D. Jane Doe Defendant

Plaintiff does not know the name of one of the nurses who allegedly refused to treat him. He describes the Jane Doe as “a white young female with a bad back and leg.” “[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint.” Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir.1996); see also Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir.1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendants' identity). After the other defendants file an answer to the complaint, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the Jane Doe defendant and will set a deadline within which plaintiff is to amend his complaint to name that defendant.

Unfortunately, plaintiff did not provide the date that the Doe defendant allegedly refused to treat him. That would be helpful information in identifying her later. Plaintiff may need to give defendants more information about Doe during discovery before they can give him the information he needs to amend his complaint.

ORDER

IT IS ORDERED that

1. Plaintiff Jermichael Carroll is GRANTED leave to proceed on the following claims:

(1) defendants Chapman, Royce, Judd and Lindsay Walker have refused plaintiff's requests to transfer him to a different cell with a raised bed or provide a better mattress, in violation of the Eighth Amendment;

(2) defendants Walker, J. Gohde, Kathy Whalen, Melissa Thorne, Trisha Anderson and Jane Doe have refused to refer plaintiff to a doctor or otherwise treat his pain, in violation of the Eighth Amendment.

3. Plaintiff's claim that defendant Isaac Hart violated the due process clause by rejecting his grievances is DISMISSED for plaintiff's failure to state a claim upon which relief may be granted. Plaintiff's complaint is DISMISSED as to defendant Hart.

4. 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. 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.

5. Once the defendants answer the complaint, the clerk of court will set a telephone conference before Magistrate Judge Stephen Crocker. At the conference, Magistrate Judge Crocker will set a schedule for the case.

6. 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 he shows on the court's copy that he has sent a copy to defendants or their attorney.

7. Plaintiff should keep a copy of all documents for his own files. If he does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

8. 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 this 4th day of April, 2017.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge