IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ROGER LEE KAUFMAN,

ORDER

Petitioner,

00-C-482-C

v.

JON E. LITSCHER, DICK VERHAGEN, JEFFREY WYDEVEN, JAN MINK, STEVEN SCHNEIDER, CORRECTIONS CORPORATION OF AMERICA, CORRECTIONAL MANAGEMENT SERVICES CORPORATION, PRISON MANAGEMENT SERVICES, INC., PRISON REALTY TRUST, INC., DOCTOR R. CRANTS, JOE HOPPER, PATRICK WHALEN, PERCY PITZER, MR. NUNN, MR. ADAMS, SAMUEL STARKS, MR. PUGH, MR. MURPHY, MR. REED, MELINDA FARRIS, MR. GREEN, MRS. CAROLYN MCGRAW, JOHN DOE #1,

Respondents.

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This is a proposed civil action for declaratory, injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner, who is presently confined at the Supermax Correctional Institution in Boscobel, Wisconsin, seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915.

From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has on three or more previous occasions had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. Although this court will not dismiss petitioner's case sua sponte for lack of administrative exhaustion, if respondents can prove that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

I. PARTIES

Petitioner Roger Lee Kaufman is a Wisconsin state prisoner. At relevant times, petitioner was detained temporarily under contract with Corrections Corporation of America at the Whiteville Correctional Facility in Whiteville, Tennessee.

Respondent Jon E. Litscher is Secretary of the Wisconsin Department of Corrections and is responsible for performing all duties relating to out-of-state contracts for the detainment of Wisconsin prisoners. Respondent Dick Verhagen is Administrator of the Wisconsin Division of Adult Institutions and is responsible for performing all duties relevant to the Wisconsin Department of Corrections' inmate complaint procedure for administrative remedy. Respondent Jeffery Wydeven is Contract Administrator for the Division of Adult Institutions and is responsible for the oversight and compliance of the contract between Corrections Corporation of America and the Wisconsin Department of Corrections for the housing of inmates at Whiteville Correctional Facility in Tennessee. Respondent Jan Mink is Deputy Administrator of the Wisconsin Department of Corrections and is an out-of-state Correction Contract Specialist and Liaison. Respondent Steven R. Schneider is Deputy Administrator of the Wisconsin Department of Corrections and is an out-of-state Corrections Contract Specialist and Liaison.

Respondent Corrections Corporation of America is the primary parent company for private prison facilities. Respondent Correctional Management Services Corporation is the primary operating company for Corrections Corporation of America. Respondent Prison Management Services, Inc., is the primary service company for Corrections Corporation of America. Respondent Prison Realty Trust, Inc., also known as Prison Realty Corporation, is the primary purchasing company for Corrections Corporation of America.

Respondent Doctor R. Crants was president and chief executive officer of Corrections Corporation of America during the time that petitioner was detained at Whiteville Correctional Facility. Respondent Crants owns and operates Whiteville Correctional Facility. Respondent Joe Hopper is Senior Divisional Director for Corrections Corporation of America and Whiteville Correctional Facility and oversees the operation and function of Whiteville Correctional Facility. Respondent Patrick Whalen was (at an unspecified time) the warden for Corrections Corporation of America at Whiteville Correctional Facility and was responsible for the care and custody of all inmates and for all disciplinary and administrative remedies at Whiteville Correctional Facility. Respondent Percy Pitzer is the acting warden for Corrections Corporation of America and is responsible for the care and custody of all inmates and for all disciplinary and administrative remedies at the Whiteville Correctional Facility.

Respondent Mr. Nunn is Chief of Security for Corrections Corporation of America at

Whiteville Correctional Facility. Respondent Nunn's responsibilities include disciplinary and administrative remedies and supervision of subordinates and their behavior. Respondent Mr. Adams is Assistant Chief of Security for Corrections Corporation of America at Whiteville Correctional Facility and is responsible for administrative segregation, disciplinary reviews, administrative remedies and supervision of subordinates and their behavior. Respondent Samuel Starks is Administrative Segregation/Administrative Confinement Lieutenant Supervisor for Corrections Corporation of America at Whiteville Correctional Facility. Respondent Starks is responsible for the administrative confinement unit, including policies, procedures and supervision of subordinates and their behavior. Respondents Mr. Pugh and Mr. Murphy are senior correctional officers for Corrections Corporation of America at Whiteville Correctional Facility and are responsible for the close supervision of inmates, including the carrying out of disciplinary restrictions and other daily functions. Respondent Mr. Reed was a correctional officer for Corrections Corporation of America at Whiteville Correctional Facility and was responsible for carrying out orders, cell searches and other daily functions. Respondents Melinda Farris and Mr. Green are correctional officers for Corrections Corporation of America at Whiteville Correctional Facility and are responsible for carrying out orders, cell searches and other daily functions. Respondent Carolyn McGraw is the Program Review Coordinator for Corrections Corporation of America at Whiteville Correctional Facility.

She is responsible for all program review hearings and recommendations. Respondent John Doe #1 is an unidentified Special Operation Response Team member who is called in from other Corrections Corporation of America-run private prisons by the warden to regain control of the prison during a riot or disturbance.

II. TRANSFER TO WHITEVILLE CORRECTIONAL FACILITY

On July 26, 1998, petitioner was transferred against his will from a Wisconsin Department of Corrections facility in Wisconsin to Corrections Corporation of America's Whiteville Correctional Facility in Tennessee. The transfer was pursuant to a contract between the Wisconsin Department of Corrections and the Corrections Corporation of America.

III. SPECIAL OPERATIONS RESPONSE TEAM ACTIONS IN AUGUST 1998

On August 5, 1998, unknown inmates assaulted a correctional officer during petitioner's recreation period. Two to three hundred inmates were present when the assault occurred. Afterwards, petitioner and his roommate were moved to a different housing unit. Whiteville Correctional Facility was on an institutional lockdown for the three days before petitioner was moved. During this time, petitioner was interviewed by unit manager Craft and social worker Moore and denied knowing anything about the assault on the correctional officer. Petitioner

stated his location and his recreational activity and was cleared eventually of any involvement.

Respondents Corrections Corporation of America, Correctional Management Services Corporation, Prison Management Services Inc., Prison Realty Trust, Inc. and then-president and CEO Crants implemented the Special Operation Response Team's policy. The policy was enacted so that physical abuse and violations of civil rights could be inflicted as retaliatory measures against inmates with limited recourse against Corrections Corporation of America and its employees. In addition, respondent Crants used mergers and acquisitions to design the corporation to prevent any inmate from assessing liability against the corporation or from collecting judgment. Crants created respondents Correctional Management Services Corporation, Prison Management Services Inc. and Prison Realty Trust, Inc. to diversify Correction Corporation of America's financial holdings.

On August 8, 1998, respondent warden Whalen called in a Special Operation Response Team from other Corrections Corporation of America facilities in addition to in-house officers for the movement of inmates. Petitioner and his roommate, David Kornhorst, were handcuffed behind their backs. They did not resist. During his escort from K unit to I unit, petitioner witnessed inmate Danny Lee being sprayed with a chemical agent and inmate Larry Lemons being shocked with a stun gun and having his head slammed into the hall wall. Petitioner also suffered effects from the chemical agent.

Upon arrival at I unit, inmate David Kornhorst was escorted into a new cell and had his head slammed into the lower bunk. Petitioner was then taken into the same cell, where respondent Special Operations Response Team member John Doe #1 slammed petitioner's head into the lower bunk and kicked petitioner with steel-toed jump boots. Petitioner suffered a deep bruise on his thigh that lasted a couple of weeks. Petitioner could not sleep because of the intense pain. Petitioner submitted a medical request to have his thigh looked at and photographed but no one responded to his request. Petitioner was unable to identify respondent John Doe #1 who assaulted him. Special Operations Response Team members were all dressed in black jump suits, boots and black military helmets with face shields and gas masks. Petitioner and inmate Kornhorst gave written statements to Whiteville Correctional Facility internal affairs agent Mr. Woodyear. Petitioner also gave a verbal statement to the Tennessee Bureau of Investigation.

Petitioner filed a complaint and written correspondence with Wisconsin officials in the Department of Corrections. The department first denied any abuse but after investigation admitted abuse openly in The Milwaukee Journal Sentinel. Wisconsin Department of Corrections officials did not remove petitioner from Whiteville Correctional Facility and did not rectify the undercurrent of abuse directed toward petitioner by Whiteville Correctional Facility employees.

IV. THREATS

On August 18, 1998, petitioner wrote the Wisconsin Attorney General to request intervention to investigate petitioner's claim that he was assaulted on August 8 and placed in lockdown pending investigation. From August 18, 1998 through March 3, 1999, petitioner wrote Wisconsin Department of Corrections officials to report the August 8 assault. Petitioner received no response to his complaints or written correspondence.

On March 3, 1999, Wisconsin Department of Corrections contract specialist Jan Mink responded to one of petitioner's grievances with the statement "your placement at [Whiteville Correctional Facility] is not grievable." No investigation into inappropriate comments or threats made by Whiteville Correctional Facility employees was made. On March 7, 1999, petitioner was ordered to submit to being restrained together with his roommate, inmate Matt Dirden, to allow respondent correctional officer Reed to search their cell. During the cell search, respondent Reed told petitioner that he would break petitioner's neck. Petitioner had a mental breakdown and began yelling at respondent Reed. Additional officers were called to the unit. Petitioner alleged that the threat made by respondent Reed traumatized him into having a mental breakdown and caused him to start yelling at respondent Reed. Petitioner filed an inmate grievance and request with internal affairs agent Don Paul about the threat on petitioner's life. Wisconsin Department of Corrections officials were also notified. From the

day of the threat, petitioner has suffered from cold sweats and nightmares in which Special Operations Response Team members and Whiteville Correctional Facility correctional officers try to kill him.

On July 1, 1999, petitioner wrote a letter to deputy attorney general Burneatta L. Bridge, outlining threats and respondent warden Pitzer's approval of inmate abuse. The letter was referred to David Whitcomb, chief legal counsel for the Wisconsin Department of Corrections, who did not reply.

On July 6, 1999, petitioner was threatened by respondent Whiteville Correctional Facility Chief of Security Nunn, who said that petitioner should be bull-whipped by him. Respondent Assistant Chief of Security Adams thought the threat was humorous. Petitioner's roommate, inmate Jay Breitzman, witnessed the threat because it was made during recreation for administrative segregation and they were inside the same recreation encagement. Petitioner filed an inmate grievance and letter directed to respondent Warden Pitzer and notified Wisconsin Department of Corrections officials. Petitioner was paranoid and fearful of being physically attacked while he was detained at Whiteville Correctional Facility.

On July 20, 1999, petitioner wrote David Whitcomb and the letter was referred to respondent Jeffery Wydeven, Chief of the Wisconsin Department of Corrections contract monitoring unit. On August 11, 1999, petitioner wrote to respondent Wydeven and received

no response. On September 28, 1999, respondent Jan Mink responded and forwarded petitioner's grievances to respondent warden Pitzer at Whiteville Correctional Facility. During an on-site visit, respondent Mink met with petitioner and stated that she had no power to do anything about the actions or behavior of Whiteville Correctional Facility staff. On October 20, 1999, respondent Mink responded to petitioner's correspondence and said she would discuss his placement with respondent Pitzer. Nothing changed for petitioner and he did not hear from respondent Mink again.

V. LIQUID RESTRICTION

On December 30, 1999, petitioner was placed on a thirty-day total liquid restriction for no reason. Respondent Administrative Segregation Lieutenant Samuel Starks (who was then a correctional officer) placed petitioner on the liquid restriction with the approval of respondent Assistant Chief of Security Adams. From December 30, 1999 through January 3, 2000, respondents Pugh, Murphy, Farris and Green carried out the liquid restriction even though they knew that petitioner had been placed on it for no reason.

On January 3, 2000, petitioner passed out at 8:00 a.m. and hit his head on the cell toilet and the cement floor. Petitioner's roommate, inmate James Kittinger Jr., used the cell intercom system to call for emergency medical help. Medical staff stated that petitioner was all right and

should be given liquids to drink. However, the liquid restriction was not lifted until Administrative Segregation Lieutenant Mary Davis sought the lifting of the restriction. The restriction was documented in the IB POD unit logbook by correctional officers Hayes and Kirby.

Petitioner filed Corrections Corporation of America incident statement forms 5-IC on January 1, 2000, and on January 3, 2000. Shift supervisor Capt. Porter received the incident statements. Petitioner suffers from lower and middle back pain and migraine headaches. He also suffers from post-traumatic stress from having been deprived of fluid in an attempt to kill him.

Petitioner's family contacted the Tennessee F.B.I. office in Memphis, Tennessee, regarding the liquid restriction and the conditions of petitioner's confinement. Petitioner filed inmate grievances and wrote to Corrections Corporation of America, Whiteville Correctional Facility and Wisconsin Department of Corrections officials, notifying them of abuse claims. Petitioner and his family contacted outside agencies to request investigations into petitioner's abuse claims. Petitioner was subject to a policy of abuse and deprivation of his constitutional rights.

On February 16, 2000, petitioner received correspondence from respondent Steven Schneider, contract specialist for the Wisconsin Department of Corrections, stating that

petitioner's placement and administrative segregation/administrative confinement status was up to petitioner to rectify. On March 29, 2000, respondent Schneider denied that petitioner's life had been threatened when he was placed on liquid restriction, but Schneider did not contact staff who were involved directly. On May 8, 2000, Schneider told petitioner that he had visited Whiteville Correctional Facility and had addressed petitioner's concerns with administrative captain Restevio. Schneider noted that Whiteville Correctional Facility Policy 10-100 administrative segregation/administrative confinement was being rewritten because inmates, including petitioner, were not receiving regular reviews or hearings. On June 9, 2000, Schneider claimed again that petitioner's issues had been addressed. However, Schneider never addressed petitioner's complaints about other conditions of confinement, such as not getting recreation for weeks at a time, not getting his clothes washed and not getting phone calls out to family and friends. Petitioner suffers from emotional distress and continued confinement on administrative segregation/administrative confinement status.

Petitioner corresponded also with respondents Litscher, Verhagen and Wydeven. These Wisconsin Department of Corrections officials were notified of each claim of abuse but took no action to prevent abuse. They knew that petitioner was in danger. Petitioner has suffered a psychological nightmare that has lasted close to two years.

VI. ADMINISTRATIVE CONFINEMENT REVIEW

On two separate occasions, petitioner was found guilty of attempting to escape from Whiteville Correctional Facility. One attempt was made on January 23, 1999; petitioner received thirty days' punitive segregation and 120 days' administrative confinement time. The second attempt was made on May 10, 1999; petitioner was given thirty days' punitive segregation and ninety days' administrative confinement time. Petitioner completed the set times on October 10, 1999, but was not released.

On October 21, 1999, petitioner received an ACRC hearing notice but never received a hearing. Petitioner sent the notice to respondent Mink and told her that he had been denied a hearing. Petitioner also wrote respondent Warden Pitzer to request a hearing. Petitioner did not receive a hearing.

On January 23, 2000, petitioner requested another hearing because he was entitled to a yearly review by the warden or administrator. No hearing was given. On February 1, 2000, respondent Pitzer responded to petitioner's letters and grievances by writing that petitioner "will be released from AC when you meet the criteria for release and are no longer considered an escape risk or a threat to the security of this facility." On February 4, 2000, respondent Adams gave petitioner a hearing regarding his status. Petitioner tried to provide evidence that he met the criteria for release and that he was no longer an escape risk or threat to the security

of the facility but Adams did not allow petitioner to submit the evidence. Adams said that Warden Pitzer told him that petitioner would never be released back into general population at Whiteville Correctional Facility.

At this time, petitioner began corresponding with respondent Corrections Corporation of America Senior Divisional Director Joe Hopper. On February 7, 2000, Hopper forwarded petitioner's complaint regarding his administrative confinement review committee hearing to respondent Warden Pitzer for a response. No response was given. On February 29, 2000, Hopper addressed some privileges and current housing status and noted petitioner's good behavior but made no meaningful change. On March 23, 2000, Hopper noted that thirty-day reviews were held, but did not tell petitioner the results. Hopper never addressed petitioner's concern about his past liquid restriction.

VII. CONDITIONS OF CONFINEMENT

Petitioner filed grievances on October 13, 1999, November 22, 1999, December 6, 1999 and December 21, 1999, in addition to writing respondent Pitzer regarding his conditions of confinement. Nothing was done to rectify the conditions. Petitioner was forced to bathe standing in his property storage box and share that type of bathing with his roommates. Petitioner was forced to wash his clothing in the same storage box, including state/Corrections

Corporation of America issued clothing. Petitioner and his roommate were forced to spend twenty-four hours a day, seven days a week together without recreation or out-of-cell time. This treatment continued for months at a time. There were weeks in which showers, recreation and laundry washing were provided, but these times were few and far between. Petitioner tried his best to get Corrections Corporation of America and Wisconsin Department of Corrections officials to do something, but nothing was done until April 2000, just before petitioner was transferred back to Wisconsin. Petitioner was able to take a few showers and two days' recreation that month. Petitioner suffered extreme hardship by having to take "bird baths" with a roommate present and not having clean clothing and suffering the smell of body odor in addition to not being provided regularly with cleaning supplies for cell cleaning.

VIII. RETALIATORY TRANSFER

On April 31, 2000, petitioner was transferred from the maximum security prison at Whiteville Correctional Facility to Supermax Correctional Institution in retaliation for his efforts to seek release from administrative segregation and for filing grievances, requesting hearings and writing outside agencies about abuses and conditions in the prison. After transfer and placement, petitioner received his program review summary that had been filed by respondent program review committee chairperson Carolyn McGraw. McGraw provided

intentionally false and misleading information about petitioner's conduct record, exaggerating his dangerousness and failing to mention his good behavior. Petitioner was injured when the false and misleading information was placed on his program review committee summary and he had to appeal and provide documents to Supermax staff to have the information removed. Furthermore, petitioner continues to be assigned to administrative segregation/administrative confinement because none of his good behavior has been noted or taken into consideration. This continued confinement in administrative segregation/administrative confinement based on his Whiteville Correctional Facility conduct record has caused petitioner to suffer depression and hopeless feelings of never being able to return to his past institutional adjustment level of very positive behavior that he had achieved before he was transferred out-of-state.

DISCUSSION

I. STATE ACTOR REQUIREMENT

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that he was deprived of a constitutional right and that a person acting under color of state law deprived him of such right. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). All of the respondents in this action qualify as persons acting under color of state law, including employees of Corrections Corporation of America, which is a private enterprise. See, e.g., Street v. Corrections Corp. of

America, 102 F.3d 810, 814 (6th Cir. 1996) (firm operating prison is state actor because firm performed "traditional state function" of operating a prison); Giron v. Corrections Corp. of America, 14 F. Supp.2d 1245, 1249 (D.N.M. 1998) (privately employed correction officer is state actor because he performed state function of incarcerating citizen).

II. VENUE AND JURISDICTION

According to petitioner's allegations, many or all of the acts giving rise to his claims took place outside this jurisdiction. Moreover, it appears from his allegations that several respondents are not residents of the state of Wisconsin or otherwise subject to the jurisdiction of this court. Because such defects in venue and personal jurisdiction can be waived, it is appropriate to consider the substance of the claims in petitioner's proposed complaint.

III. TRANSFER OUT-OF-STATE

"A prisoner has no due process right to be housed in any particular facility." Whitford v. Boglino, 63 F.3d 527, 532 (7th Cir. 1995); see also Pischke v. Litscher, 178 F.3d 497, 500 (7th Cir. 1999) (prisoner has no legally protected interest "in [his] keeper's identity"). In Pischke, the court of appeals concluded that the housing of Wisconsin prisoners with private prisons in other states did not violate the Thirteenth Amendment. See Pischke, 178 F.3d at

500. In addition, the court stated that it could not "think of any other provision of the Constitution that might be violated by the decision of a state to confine a convicted prisoner in a prison owned by a private firm rather than by a government." Id. Therefore, petitioner's claim that his transfer to Whiteville Constitutional Facility violated the Constitution is legally frivolous.

IV. EIGHTH AMENDMENT CLAIMS

A. Excessive Force

Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the 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, 6-7 (1992). To determine whether force was used appropriately, a court considers factual allegations about the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. See Whitley v. Albers, 475 U.S. 312, 321 (1986).

Petitioner alleges that respondent John Doe # 1 slammed his head into a lower bunk and kicked him in the thigh with steel-toed jump boots. Because petitioner was already in the

new cell at this time, such force appears to have been unnecessary. I conclude from these allegations that petitioner has stated a claim upon which relief may be granted with respect to his claim that respondent John Doe # 1 used excessive force against him.

B. Conditions of Confinement

The Eighth Amendment imposes a duty on prison officials to provide adequate shelter, although conditions may be harsh and uncomfortable. See Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997). Prisoners are entitled to "the minimal civilized measure of life's necessities." See id. (citing Farmer v. Brennan, 511 U.S. 825, 833-34 (1994)). Petitioner alleges generally that he was denied recreation for weeks at a time, was unable to have his clothes washed or make phone calls to family and friends. He also alleges that he was forced to wash his clothes and his body in a property storage box in his cell and that he was not provided cleaning supplies for cell cleaning on a regular basis.

1. Recreation

Denial of exercise may present an Eighth Amendment violation if lack of movement causes muscle atrophy, threatening the health of the prisoner. See Thomas v. Ramos, 130 F.3d 754, 763 (7th Cir. 1997). I understand petitioner to contend that respondents violated his

Eighth Amendment right to be free from cruel and unusual punishment when he was forced to spend twenty-four hours a day, seven days a week with his roommate without recreation or out-of-cell time.

In evaluating Eighth Amendment claims, the court of appeals has focused on the duration of time in which the prisoner could not exercise. In Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), the court held that a prisoner's rights were not violated when he spent twenty-eight days in confinement during which the only exercise was activity that he could do in a cell, such as push-ups or running in place: "Unless extreme and prolonged, lack of exercise is not equivalent to a medically threatening situation." See id. at 1236. See also Caldwell v. Miller, 790 F.2d 589, 600 (7th Cir. 1986) (no Eighth Amendment violation even though inmates confined to cells twenty-four hours a day for a one-month period after a lockdown). Petitioner has not alleged that he was unable to exercise in his cell or that his lack of exercise threatened his health. Petitioner has failed to state a claim upon which relief may be granted.

2. Sanitation and Hygiene

The Constitution requires that inmates receive certain hygienic necessities. See Harris v. Fleming, 839 F.2d 1232, 1235 (7th Cir.1988). Prisons must provide inmates with materials

sufficient to meet basic levels of sanitation and hygiene. See Martin v. Sargent, 780 F.2d 1334, 1337-38 (8th Cir. 1985) (plaintiff's allegation that warden denied him proper items for personal hygiene sufficiently stated claim to survive motion for dismissal). Although petitioner alleges that he was not provided regularly with cleaning supplies for cell cleaning, he has not alleged that his cell was particularly dirty or unsanitary. Petitioner's allegation that he was forced to bathe standing in his property storage box and in front of his roommate fails to state a claim upon which relief may be granted because it is not less than the "minimal civilized measure of life's necessities." Dixon v. Godinez, 114 F.3d at 642. Petitioner was able to bathe regularly, even though he did not like the method of bathing.

Plaintiff's claim relating to unsanitary clothing does not amount to a constitutional infringement. Although the court of appeals has not addressed this specific claim, a number of district courts have reached the conclusion that having to wear dirty clothing is not unconstitutional. See Harris v. Fairman, No. 94 C 3883, 1995 WL 151806 (N.D. Ill. Mar. 31, 1995) (holding that prisoner failed to state claim when he alleged that clothing provided to him was unsanitary and was washed "only infrequently"); Coughlin v. Sheahan, No. 94 C 2863, 1995 WL 12255, at *3 (N.D. Ill. Jan. 12, 1995) (finding that plaintiff failed to state claim when he alleged that he was provided only one change of clothing during 3-month term and was forced to wash his clothes in sink); Isaac v. Fairman, No. 92 C 3875, 1994 WL 63219, at *6

(N.D. Ill. Feb. 15, 1994) (ruling that detainee failed to state claim when he alleged that he received only one uniform, which he was not allowed to wash).

3. Phone calls to family

Petitioner's allegations in his complaint concerning restrictions on his ability to use the telephone are too sparse to state a constitutional claim. He alleges only that respondent Schneider never addressed petitioner's complaints about other conditions of confinement, such as . . . "getting phone calls out to family/friends." Cpt. at 4-11. Unreasonable restrictions on a prisoner's telephone access may violate the First and Fourteenth Amendments. See Murphy v. Walker, 51 F.3d 714, 718 n. 7 (7th Cir. 1995) ("In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may . . . violate the Fourteenth Amendment"). However, the court of appeals has recognized that if prison officials could identify legitimate reasons, security or otherwise, for limiting access to a telephone, they would not be liable for any constitutional violations. See id. at 718.

Petitioner has not alleged any facts from which an inference may be drawn that the limitations on his use of the telephone were either unreasonable or imposed in the absence of any legitimate penological purpose. He has failed to state a claim upon which relief may be granted.

C. Failure to Protect

In a case alleging a defendant's failure to protect a prisoner from harm, "[t]he inmate must prove a sufficiently serious deprivation, i.e., conditions which objectively 'pos[e] a substantial risk of serious harm.'" Pope v. Shafer, 86 F.3d 90, 92 (7th Cir. 1996). The inmate also must prove that the prison official acted with deliberate indifference to the inmate's safety, "effectively condon[ing] the attack by allowing it to happen." Langston v. Peters, 100 F.3d 1235, 1237 (7th Cir. 1996) (quoting Haley v. Gross, 86 F.3d 630, 640 (7th Cir. 1996)). A prison official may be liable for knowing that there was a substantial likelihood that the prisoner would be assaulted and failing to take reasonable protective measures. See Farmer, 511 U.S. at 847. The prison official must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and the official must draw that inference. See Pavlick v. Mifflin, 90 F.3d 205, 207-08 (7th Cir. 1996). The prisoner does not have to show that the prison official intended that the prisoner be harmed; it is enough that the official ignored a known risk to the prisoner's safety. See id. at 208. In failure to protect cases, "[a] prisoner normally proves actual knowledge of impending harm by showing that he complained to prison officials about a specific threat to his safety." McGill v. Duckworth, 944 F.3d 344, 349 (7th Cir. 1991).

Because petitioner is proceeding pro se, I must construe his complaint liberally. Petitioner contends that Wisconsin Department of Corrections officials are liable to him for endangering his safety by allowing him to continue to be housed at Whiteville Correctional Facility after he notified them of the physical abuse he suffered from respondents John Doe #1. Petitioner premises this claim on allegations that he reported violations of his constitutional rights to respondents Litscher, Verhagen and Wydeven, Mink and Schneider, all of whom failed to investigate the claims or prevent further abuse. Although petitioner has an uphill battle in obtaining evidence to prove such a claim, I cannot say at this early stage of the proceedings that he could not prove any set of facts entitling him to relief. Therefore, petitioner will be allowed to proceed in forma pauperis on this claim.

D. SORT Policy and Approval of Conditions

Petitioner alleges generally that

> The policy of SORT was implemented by CCA headquarters and Defendants [Correctional Management Services Corporation], [Prison Management Services Inc.] and [Prison Realty Trust, Inc.] and then-President and CEO Doctor R. Crants. The SORT policy was enacted so physical abuse and violations of civil rights could be inflicted as retaliatory measures against inmates with limited recourse against CCA and also its employees. This is not the only policy enacted to shield CCA liability. Doctor Crants thru [sic] mergers and acquisitions tried to design his corporation to prevent any Plaintiff from seeking liability or efforts to collect judgments by creating Defendants [Correctional Management Services Corporation], [Prison Management Services Inc.] and [Prison Realty Trust, Inc.]

in attempt to diversify CCA's financial holdings.

Cpt. at 4-2. Nowhere in his statement of facts does petitioner indicate what the SORT policy is. In his request for relief, petitioner requests a declaration that respondent Crants and the three corporate respondents "have and are engaged in policies to prevent any plaintiff from seeking judgment/relief for developing the policy of SORT to inflict abuse in violation of the U.S. Constitution and allowing that policy to continue." Cpt. at 5a. Petitioner does not allege *how* respondents have attempted to prevent prisoners from challenging the undescribed SORT policy. Petitioner requests damages from respondent Corrections Corporation of America and the three other corporate respondents "for the defendants' active administrative role in approving those conditions" and from respondent Crants "for the defendant's active supervisory role in creating those conditions." Petitioner has failed to allege personal knowledge on the part of these respondents and has therefore failed to state a claim upon which relief may be granted against respondents Crants, Corrections Corporation of America, Correctional Management Services Corporation, Prison Management Services, Inc. and Prison Realty Trust, Inc.

In addition, petitioner requests a declaration that respondents Hopper, Whalen and Pitzer failed to prevent assault and threats made against him by ordering the use of the Special Operation Response Team and allowing the policies and procedures that allowed the abuse to

occur to continue. Petitioner has not alleged that he told any of these defendants about his abuse by John Doe #1 and has failed to state a claim upon which relief may be granted. Petitioner's allegations are too general to imply that these respondents were personally involved in inflicting abuse upon him.

E. Threats

Petitioner alleges that respondent Reed threatened to break petitioner's neck and that respondent Nunn threatened to bull-whip him. These allegations do not establish a constitutional claim. See Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) (verbal threats by correctional officer do not amount to a constitutional violation). Because the threats do not rise to the level of a constitutional violation, petitioner has no viable claim against respondent Adams, who treated respondent Nunn's threat as humorous.

F. Liquid Restriction

Petitioner alleges that respondent Starks, with the approval of respondent Adams, placed petitioner on a thirty-day total liquid restriction. It is not clear from the complaint when the restriction was lifted but it was carried out for at least five days by respondents Pugh, Murphy, Farris and Green. The allegation that respondents denied petitioner liquid for days

at a time is sufficient to state a claim under the Eighth Amendment. Petitioner will be allowed to proceed on this claim against respondents Starks, Adams, Pugh, Murphy, Farris and Green.

V. DUE PROCESS CLAIM

I understand petitioner to contend that his rights under the due process clause of the Fourteenth Amendment were violated when he was forced to spend extended time in administrative segregation without reviews or hearings. Petitioner fails to state a claim upon which relief may be granted. His allegations do not establish that he was deprived of a protectible liberty interest. A procedural due process violation against government officials requires proof of inadequate procedures *and* interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In Sandin v. Conner, 515 U.S. 472, 483-484 (1995), the Supreme Court held that liberty interests "will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." After Sandin, in the prison context, protectible liberty interests are essentially limited to the loss of good time credits because the loss of such credit affects the duration of an inmate's sentence. See Wagner v. Hanks, 128 F.3d 1173, 1176 (7th Cir. 1997) (when sanction is confinement in disciplinary segregation for period not exceeding remaining term of prisoner's incarceration, Sandin does not

allow suit complaining about deprivation of liberty).

Petitioner has no liberty interest in not being assigned to administrative confinement, because such confinement is "well within the terms of confinement ordinarily contemplated by a prison sentence." Hewitt v. Helms, 459 U.S. 460, 468 (1983). See also Smith v. Shettle, 946 F.2d 1250, 1252 (7th Cir.1991) ("a prisoner has no natural liberty to mingle with the general prison population"); Wis. Admin. Code DOC § 308.04 (1998) note ("by providing the review [by the administrative review committee prior to placing an inmate in administrative confinement], the Department does not intend to create any protected liberty interest by using mandatory language"). Because petitioner has no liberty interest that has been violated, he has no right to due process before being placed in administrative confinement or before his stay in administrative confinement can be continued. Petitioner has failed to state a claim upon which relief may be granted.

VI. RETALIATORY TRANSFER

A prison official who takes action against a prisoner in retaliation for the prisoner's exercise of a constitutional right may be liable to the prisoner for damages. See Babcock v. White, 102 F.3d 267, 274 (7th Cir. 1996). To state a claim of retaliatory treatment for the exercise of a constitutionally protected right, plaintiff need not present direct evidence in the

complaint; however, he must "'allege a chronology of events from which retaliation may be inferred.'" Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994) (quoting Benson v. Cady, 761 F.2d 335, 342 (7th Cir. 1985)). It is insufficient simply to allege the ultimate fact of retaliation. See Benson, 761 F.2d at 342.

Petitioner's bare allegation that "transfer was made in retaliation because he was seeking release from adm. seg./adm. conf., by filing grievances, requesting hearings, writing out-side agencies of abuses and conditions," Cpt. at 4-16, is insufficient to state a viable retaliation claim. Although liberal pleading standards apply at this stage of the litigation, petitioner has failed to allege even the bare minimum for a retaliation claim. Petitioner's failure to allege which respondents were responsible for his transfer makes it impossible to draw an inference that his transfer was the result of retaliation because there is no allegation that anyone about whom he complained in a grievance or of whom he requested a hearing had anything to do with his transfer.

Petitioner's allegation that respondent McGraw provided false or misleading information in petitioner's program review summary after his transfer fails to state a claim under any provision of the Constitution.

VII. RESPONDEAT SUPERIOR

It is well established that liability under § 1983 must be based on the defendant's personal involvement in the constitutional violation. See Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). In a § 1983 action, there is no place for the doctrine of respondeat superior, under which a supervisor may be held responsible for the acts of his subordinates. See Gentry, 65 F.3d at 561; Del Raine, 32 F.3d at 1047; Wolf-Lillie, 699 F.2d at 869. Under this authority, it is clear that respondent Warden Pitzer is not liable for the deprivation of any of petitioner's constitutional rights because petitioner has not alleged that Pitzer participated personally in any deprivation of his constitutional rights.

However, where, as here, a high official such as Pitzer is named as a respondent, petitioner can proceed against that high official so that petitioner can conduct formal discovery to uncover the names of the persons directly responsible for violating his constitutional rights. See Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981) (pro se complaint should not suffer dismissal of a defendant high official for lack of personal involvement when claim involves conditions or practices which, if they existed, would likely be known to higher officials or if petitioner is unlikely to know the person or persons directly responsible absent formal discovery). In order to proceed with his claim against respondent John Doe #1, petitioner will

have to serve him with the complaint because petitioner must provide legal notice of the claim against him. See Fed. R. Civ. P. 5(a). Because it appears that petitioner does not know the name of John Doe #1, I will not dismiss the complaint against Warden Pitzer at this time. Petitioner may proceed against Pitzer for the purpose of discovering the name of respondent John Doe #1. See id. Petitioner may also proceed against Pitzer for the purpose of discovering the addresses of respondent CCA employees against whom petitioner will be granted leave to proceed who may now be working at facilities other than Whiteville Correctional Facility.

Fed. R. Civ. P. 4(m) requires that a plaintiff serve a defendant with the complaint within 120 days of the date the complaint is filed with the court. This does not mean that petitioner can wait for three months before making efforts to learn the identity of the unknown respondent. Petitioner is to draft interrogatories promptly, requesting the name and address of respondent John Doe #1 and is to serve the interrogatories on respondent Pitzer immediately after respondent Pitzer files a response to petitioner's complaint. Petitioner's interrogatories to respondent Pitzer should be mailed to the lawyer representing Pitzer, whose name and address will be shown on Pitzer's response.

VIII. MOTION FOR APPOINTMENT OF COUNSEL

Petitioner has submitted letters from three lawyers who declined to represent him in this

case. Although petitioner appears to have made a reasonable effort to retain counsel, the quality of his complaint suggests that he is competent to represent himself on the few issues on which he will be allowed to proceed. Before appointing counsel, the court must determine a pro se petitioner's abilities and skills in light of the complexity of the legal issues and evidence in the case. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). "The simpler the case, the less intelligent or experienced the petitioner need be to handle it without assistance of counsel." Id. at 321. Petitioner's motion for the appointment of counsel will be denied.

ORDER

IT IS ORDERED that

1. Petitioner Roger Lee Kaufman's request for leave to proceed in forma pauperis on his claims that respondent John Doe #1 used excessive force against him, that respondents Samuel Starks, Mr. Adams, Mr. Pugh, Mr. Murphy, Melinda Farris and Mr. Green denied him liquids and that respondents Jon E. Litscher, Dick Verhagen, Jeffrey Wydeven, Jan Mink and Steven Schneider failed to protect him from harm in violation of the Eighth Amendment is GRANTED;

2. Petitioner's request for leave to proceed in forma pauperis on all other claims is DENIED;

3. Petitioner may proceed against respondent Percy Pitzer for the purpose of conducting discovery as to the identity of John Doe #1 or obtaining forwarding addresses, if Pitzer has them, of any respondent who may no longer be at Whiteville Correctional Facility against whom petitioner has been allowed to proceed ;

4. Respondents Corrections Corporation of America, Correctional Management Services Corporation, Prison Management Services, Inc., Prison Realty Trust, Inc., Doctor R. Crants, Joe Hopper, Patrick Whalen, Mr. Nunn, Mr. Reed and Carolyn McGraw are DISMISSED from this action;

5. Petitioner's motion for the appointment of counsel is DENIED;

6. Service of this complaint will be made promptly after petitioner submits to the clerk of court thirteen (13) completed marshals service forms and fourteen (14) completed summonses, one for each respondent and one for the court. Enclosed with a copy of this order are sets of the necessary forms. If petitioner fails to submit the completed marshals service and summons forms before November 30, 2000, or explain why he cannot do so, his complaint will be subject to dismissal for failure to prosecute;

7. In addition, petitioner should be aware of the requirement that he send respondents a copy of every paper or document that he files with the court. Once petitioner has learned the identity of the lawyer or lawyers who will be representing respondents, he should serve the

lawyer directly rather than respondents. Petitioner should retain a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents. The court will disregard any papers or documents submitted by petitioner unless the court's copy shows that a copy has gone to respondents or to respondents' attorney; and

8. The unpaid balance of petitioner's filing fee is $49.25; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 14th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge