IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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VINCENT FAYNE,

Petitioner, ORDER

v. 03-C-0215-C

CORRECTIONAL OFFICER WALTER,

Respondent.

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This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Vincent Fayne, an inmate at the Racine Correctional Institution in Sturtevant, Wisconsin, alleges that because he is African American, respondent Correctional Officer Walter used excessive force and denied him medical care in violation of his Eighth Amendment and equal protection rights.

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, the prisoner's complaint must be dismissed if, even under a liberal construction, it 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. See 42 U.S.C. § 1915e. Although this

court will not dismiss petitioner's case on its own 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 material allegations of fact.

ALLEGATIONS OF FACT

Petitioner Vincent Fayne is an inmate at the Racine Correctional Institution in Sturtevant, Wisconsin. At all times relevant to this lawsuit, petitioner was an inmate at the Prairie du Chien Correctional Institution. Respondent Correctional Officer Walter is an employee of the Prairie du Chien facility.

On or about June 30, 2002, respondent escorted petitioner from his segregation cell to the restroom. The segregation cells lack a toilet or sink. On the way back to the cell, petitioner asked respondent why he was sweating profusely. Respondent replied, "By rubbing up against your mother. That's the problem with you niggers, always a smart mouth." (Later in his complaint, petitioner alters the quote slightly by alleging that respondent stated, "That's what's wrong with you niggers, always running your mouth.")

As respondent secured petitioner's cell door, respondent instructed petitioner to place his hands through the trap in the door so that his restraints could be removed. Respondent intentionally and maliciously slammed the trap door shut while petitioner's hands were in the trap because petitioner is African American. Petitioner's hands were injured. He sustained nerve damage and continues to suffer pain.

Petitioner demanded medical attention, which respondent refused to provide. As a result, petitioner suffered undue pain.

DISCUSSION

Petitioner allege that because he is African American, respondent used excessive force by slamming his hands in the cell door trap and denied him medical care for the injuries he sustained in violation of the Eighth Amendment and equal protection.

A. Excessive Force

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). 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 revealing 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); but see Outlaw v. Newkirk, 259 F.3d 833, 837 (7th Cir. 2001) (court held de minimis use of force in case in which inmate's hand swollen and bruised after guard slammed it in cuffport hatch). Petitioner alleges that respondent slammed his hands in the cell door trap because he is African American. Accordingly, petitioner will be allowed to proceed on his claim of excessive force. In addition, respondent should be aware that petitioner has stated a claim of excessive force notwithstanding the fact that petitioner alleges that the incident was racially motivated.

B. Medical Care

The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, a

plaintiff must establish facts from which it can be inferred that he had a serious medical need and that prison officials were deliberately indifferent to this need. See Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). In attempting to define "serious medical needs," the Court of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life threatening or that carry risks of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. See Gutierrez, 111 F.3d at 1371, 1373. ("'serious' medical need is one that has been diagnosed by a physician as mandating treatment"). Petitioner's allegations that his hands were injured and that he suffered nerve damage are sufficient at this stage of the proceedings to suggest that he had a serious medical need.

The Supreme Court has held that deliberate indifference means that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 824, 837 (1994). Inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. Deliberate indifference in the denial or delay of medical care can be shown by a defendant's actual intent or reckless disregard. Reckless disregard is highly unreasonable conduct or a

gross departure from ordinary care in a situation in which a high degree of danger is readily apparent. See Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985).

The question is whether the denial of medical treatment is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition," Snipes, 95 F. 3d at 592, giving rise to a claim of deliberate indifference. See also Estelle, 429 U.S. at 104 (holding that deliberate indifference "is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed"). At this early stage of the proceedings, I conclude that petitioner's allegation that because he is African American, respondent denied him medical care for his injured hands is sufficient to show deliberate indifference. Again, respondent should be aware that petitioner has stated a claim of denial of medical care notwithstanding the fact that petitioner alleges that the incident was racially motivated.

C. Equal Protection

The equal protection clause of the Fifth Amendment prohibits state actors from treating similarly situated individuals differently because of their membership in a suspect class or "definable minority" or because of the exercise of a fundamental right. Nabozny v. Podlesny, 92 F.3d 446, 457 (7th Cir. 1996); see also Smith on behalf of Smith v. Severn,

129 F.3d 419, 429 (7th Cir. 1997). Because petitioner "suggests discriminatory motives impelled discriminatory treatment of him, he has stated an equal protection claim." Antonelli v. Sheehan, 81 F.3d 1422, 1433 (7th Cir. 1996). In this case, petitioner alleges that because he is African American (and respondent made a racial slur directly proceeding the incident), respondent slammed his hands in the cell door trap and denied him medical care. These allegations are sufficient to state an equal protection claim.

ORDER

IT IS ORDERED that

1. Petitioner Vincent Fayne's request for leave to proceed in forma pauperis is GRANTED as to his excessive force, denial of medical care and equal protection claims;

2. The unpaid balance of petitioner's filing fee is $133.81; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);

3. For the remainder of this lawsuit, petitioner must send defendants a copy of every paper or document that he files with the court. Once petitioner learns the name of the lawyer that will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard documents petitioner submits that do not show on the court's copy that petitioner has sent a copy to respondent or to respondent's attorney; and

4. Petitioner 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.

Entered this 22nd day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge