IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LYLE DAVID RIVARD,

Plaintiff,

v.

TIMOTHY DUMA; DR. GARY BRIDGEWATER; PHILLIP KINGSTON; SGT. DELONG; OFFICER ISAACSON; OFFICER JAMES; OFFICER TOMAC; PAT SIEDSCHLAG; SANDRA HAUTAMAKI; OFFICER GARRISON; JANET NICKEL; KELLY WHEELER; WILLIAM NOLAND; and CINDY O'DONNELL,

Defendants.

ORDER

03-C-269-C

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This is a proposed civil action for monetary and injunctive relief, brought under 42 U.S.C. § 1983. Plaintiff is a state prisoner presently confined at the Columbia Correctional Institution in Portage, Wisconsin. Although plaintiff has paid the full $150 filing fee, because he is a prisoner the court must screen his complaint, identify the claims and dismiss any claim that is frivolous, malicious or is not a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(a), (b). 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).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Lyle David Rivard is an inmate currently housed at the Columbia Correctional Institution in Portage, Wisconsin. Defendants are all employees of the Department of Corrections. Plaintiff has an open wound on the side of his neck from a cancer operation that causes him pain. All the defendants are intentionally subjecting him to an imminent danger of infection because of the unsanitary environment in the disciplinary segregation unit. Petitioner is exposed to filth and is allowed to clean his cell only once each week and never in a complete fashion. Petitioner is allowed to shower only once every four days. Every employee of the Department of Corrections is responsible for the safe custody of inmates.

OPINION

I understand plaintiff to allege that the conditions in his cell are so unsanitary as to violate the Eighth Amendment, particularly in light of the fact that he has an open wound on his neck from a cancer operation. As an initial matter, I note that plaintiff has sued fourteen Department of Corrections officials without specifying in his complaint how each

defendant was involved in the alleged deprivation of his rights, other than to say that all the defendants are subjecting him to an imminent danger of infection and that all department employees are responsible for insuring his safety. To recover damages for alleged constitutional violations, plaintiff must establish each respondent's personal responsibility for the claimed deprivation. See Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003) (noting that "§ 1983 lawsuits against individuals require personal involvement in the alleged constitutional deprivation to support a viable claim"). Even under liberal notice pleading standards, plaintiff's complaint must contain enough information to allow defendants to answer, a task plaintiff makes difficult by omitting any information suggesting how the individual defendants were involved in the alleged wrongdoing. However, construing plaintiff's complaint liberally, I understand him to allege that each defendant was aware of the unsanitary conditions in his cell and that each defendant refused to do anything in response.

In order to state a claim under the Eighth Amendment, plaintiff's allegations about prison conditions must satisfy a test that involves both an objective and subjective component. See Farmer v. Brennan, 511 U.S. 825, 834 (1994). He must allege that the conditions to which he was subjected were "sufficiently serious" (objective component) and that defendants were deliberately indifferent to his health or safety (subjective component). Id. Conditions of confinement that deprive prisoners of the "minimal civilized measure of

life's necessities" satisfy the objective component of the Eighth Amendment inquiry. Farmer, 511 U.S. at 834 (citations omitted). The Eighth Amendment protects individuals against both harm that is occurring and against "conditions posing a substantial risk of serious harm" if allowed to continue. Id.

As for the subjective component of the Eighth Amendment test, the Supreme Court has held that deliberate indifference requires 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." Id. at 837. If the circumstances suggest that the prison officials were exposed to information about the risk and thus must have known about it, that evidence could be sufficient to allow a trier of fact to find actual knowledge. See id. at 842-43. The officials can still show that they were unaware of the risk or that they were aware of the risk and took reasonable steps to prevent the risk of harm. See id. at 844-45.

Even construed liberally, plaintiff's allegations regarding the conditions in his cell are not objectively sufficiently serious to state a claim under the Eighth Amendment. Plaintiff's complaint merely alleges that he is being forced to live in an "unsanitary environment" where he is "subject to filth" and that he is allowed to clean his cell only once each week and to shower only twice each week. Plaintiff has attached to his complaint exhibits consisting of letters to the warden and inmate complaints that flesh out his allegations. According to plaintiff, he is allowed to "change and shower only twice a week and change [his] sheets only

once a week" and his "cell is only cleaned once a week and that's with dirty mop water and some watered down sanitizer sprayed on toilet paper." Plaintiff also states that "crud" is caked on his bedframe and that there is a "urine stain around the toilet in the [concrete] that will never be able to be removed." Finally, plaintiff notes that he is "sure a daily shower and change of clothes would be a start" and that he does not "believe cleaning my room once a week is very sanitary." Plaintiff fears that these conditions put him at risk of contracting an infection.

In Davenport v. DeRobertis, 844 F.2d 1310, 1316-17 (7th Cir. 1988), the Court of Appeals for the Seventh Circuit reversed a district court's grant of an injunction requiring prison officials to allow inmates to shower three times each week. The court of appeals found that one shower a week was constitutionally sufficient. See id. ("No doubt Americans take the most showers per capita of any people in the history of the world, but many millions of Americans take fewer than three showers (or baths) a week without endangering their physical or mental health, and abroad people as civilized as Americans take many fewer showers on average, as every tourist knows."). Moreover, the fact that plaintiff's cell gets dirty does not mean that he is being denied the minimal civilized measure of life's necessities, particularly in light of the fact that his cell is cleaned once each week. See Morissette v. Peters, 45 F.3d 1119, 1122-23, n.6 (7th Cir. 1995) (plaintiff's "filthy" cell and inadequate cleaning supplies did not violate Eighth Amendment); Geder v. Godinez, 857 F.

Supp. 1334, 1341 (N.D. Ill. 1995) (defective pipes, sinks and toilets, improperly-cleaned showers, stained mattresses, accumulated dust and dirt and infestation by roaches and rats, alone or in combination, did not rise to level of Eighth Amendment violation); Wilson v. Schomig, 863 F. Supp. 789, 794-95 (N.D. Ill. 1994) (cell containing dirt, dust, roaches, a leaking roof during rainstorms and urine-stained mattress did not violate the Eighth Amendment). Plaintiff's speculative fear that his surgical incision might get infected does not add anything to his Eighth Amendment claim. Because the conditions plaintiff complains of in his complaint are not sufficiently serious to violate the Eighth Amendment alone or in combination, he will be denied leave to proceed and his case will be dismissed.

ORDER

IT IS ORDERED that

1. This civil action is DISMISSED pursuant to 28 U.S.C. § 1915A for plaintiff Lyle David Rivard's failure to state a claim upon which relief may be granted;

2. A strike will be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g).

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 7th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge