IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ELLIS EDWARD MURCHISON J.R.

Plaintiff, ORDER

v. 03-C-0058-C

GARY R. McCAUGHTRY and
BRUCE MURASKI,

Defendants.

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This is a proposed civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Ellis Edward Murchison, who is currently an inmate at the Stanley Correctional Institution in Stanley, Wisconsin, contends that defendants Gary R. McCaughtry and Bruce Muraski violated his Eighth Amendment rights by transferring him to Stanley Correctional Institution instead of a minimum security prison in Milwaukee.

Although plaintiff has paid the full filing fee (and thus is not proceeding in forma pauperis), his complaint must still be screened because he is a prisoner proceeding pro se. See 28 U.S.C. § 1915A.

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.

Because plaintiff's Eighth Amendment claims are legally frivolous, I will dismiss his cause of action.

In his complaint and attachments, plaintiff makes the following material allegations of fact.

ALLEGATIONS OF FACT

Plaintiff is an inmate at the Stanley Correctional Institution in Stanley, Wisconsin. At all times relevant to this complaint, plaintiff was an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. Defendant Gary R. McCaughtry is the warden and defendant Bruce Muraski is head captain of the gang division at the Waupun Correctional Institution. The Waupun prison is a maximum security facility.

In October 2002, plaintiff told defendant Muraski about a gang riot that was to take place at Waupun. Plaintiff and defendant Muraski met two times a week for about three months. In these meetings, defendant Muraski found out plaintiff's information was true.

Some of the gang members discovered that plaintiff had informed defendant Muraski

about their planned riot. One of the gang leaders put out an "s.o.s." or "smash on site" order on plaintiff. Plaintiff was threatened more than ten times with weapons, including a razor, shanks and a pair of cutting tools. Muraski told plaintiff that he would move plaintiff to another cell in the prison, and he did so.

Plaintiff's clothes were thrown into the water, gang members knocked stuff he was carrying out of his hands including his food tray. Plaintiff was scared for his life. Defendants knew "what was going on."

Defendant Muraski told plaintiff that he need to sign a "C.I. statement" and then he would transfer plaintiff out of the prison. Plaintiff asked to be sent to a minimum security prison in Milwaukee (located at the intersection of 30th and Fond du Lac). Muraski believed this was a good idea because the gang leaders were spreading word about plaintiff at different maximum and medium security prisons.

Plaintiff was not scheduled to see the program review committee until May 2003. Defendant Murask gave plaintiff an "early recall." Plaintiff met with the program review committee in January 2003.

Plaintiff was told by the program review committee that he could not go straight from a maximum security prison to a minimum security prison. The committee asked plaintiff what medium security prison he preferred. Plaintiff responded Racine. The committee told plaintiff that he would be at Racine for a month and then he would be transferred to a

minimum security prison in Milwaukee. One week later plaintiff met with the program review committee. At this meeting, the committee "read some things" to plaintiff and told him that he would be transferred to a prison in either Appleton or Stanley.

Plaintiff's social worker, Laura Bonie, told plaintiff that the committee changed his transfer because the Madison office would not approve it. Plaintiff wrote the warden, but received no response.

Plaintiff did not exhaust his administrative remedies because "[he] was told not to by Captain Muraski because this situation was going to be done undercover and he would take care of it."

Plaintiff was transferred to the Stanley Correctional Institution.

(Since plaintiff filed his proposed complaint on January 30, 2003, he has written two additional letters to this court that contain additional allegations. First, in a February 10, 2003 letter, plaintiff alleges that two inmates involved in the gang riot at Waupun were also transferred to Stanley and that he is concerned about his safety. Second, in a February 14, 2003 letter, plaintiff alleges that (1) these inmates have threatened his safety and he has had a shank pulled on him; and (2) defendant Muraski knew he needed to be transferred to Milwaukee because he wishes to donate a kidney to his mother, who is on dialysis and also is located in Milwaukee.)

DISCUSSION

I understand plaintiff to allege that, by transferring him to Stanley Correctional Institution, defendants violated his right to be free of cruel and unusual punishment and were deliberately indifferent to his safety needs. Ignoring plaintiff's admission that he has not exhausted his administrative remedies before filing this lawsuit, see Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999) (prisoner must exhaust his administrative remedies before filing suit in court), I find that plaintiff's allegations do not rise to the level of an Eighth Amendment violation.

The Eighth Amendment's cruel and unusual punishment clause prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Conditions that create "temporary inconveniences and discomforts" or that make "confinement in such quarters unpleasant" are insufficient to state an Eighth Amendment claim. Adams v. Pate, 445 F.2d 105, 108-09 (7th Cir. 1971). The fact that defendants allegedly broke their promise to transfer plaintiff to a minimum security prison in Milwaukee does not implicate the Eighth Amendment's cruel and unusual punishment clause. To the extent that plaintiff alleges his transfer violates due process, prisoners do not have a liberty interest in not being transferred from one institution to another. See Meachum v. Fano, 427 U.S. 215 (1976) (due process clause does not limit

interprison transfer even when the new institution is much more disagreeable).

As to plaintiff's deliberate indifference claim, plaintiff must allege facts suggesting that the official knew there was a substantial risk that he would be assaulted and that he failed to take reasonable protective measures. See Farmer v. Brennan, 511 U.S. 825, 847 (1994). A prisoner normally proves that a prison official had actual knowledge of the likelihood that he is in serious physical danger by showing that he complained to the official about "'a *specific threat* to his safety.'" Pope v. Shafer, 86 F.3d 90, 92 (7th Cir. 1996) (quoting McGill v. Duckworth, 944 F.3d 344, 349 (7th Cir. 1991)) (emphasis added). In this case, plaintiff's allegations do not support a claim that defendants refused to protect him from a substantial risk of serious harm. In fact, plaintiff acknowledges that defendants transferred him to the Stanley Correctional Institution out of concern for his safety. The crux of plaintiff's complaint is that defendants did not send him to the prison of his choice, a minimum security facility in Milwaukee. These allegations do not suggest that defendants were deliberately indifferent to plaintiff's safety.

Because plaintiff does not have a constitutional right to be transferred to a particular institution and because plaintiff's allegations do not suggest that defendants have been deliberately indifferent to his safety, I will dismiss plaintiff's complaint as legally frivolous.

ORDER

IT IS ORDERED that

1. Plaintiff Ellis Edward Murchison's lawsuit is DISMISSED pursuant to 28 U.S.C. § 1915A because his claims are legally frivolous;

2. A strike will be recorded against plaintiff pursuant to § 1915(g); and

3. The clerk of court is directed enter judgment in favor of defendants and close this file.

Entered this 5th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge