

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

CHILDERIC MAXY,

Petitioner,

ORDER

v.

03-C-623-C

KATHY LARSON, FALLEN YAUG,
TODD FISCHER, Officers of
the La Crosse Police Department,

Respondents.

In an order dated February 5, 2004, I dismissed this case pursuant to 28 U.S.C. § 1915 because petitioner Childeric Maxy had failed to state a claim upon which relief could be granted. In his complaint, petitioner alleged that respondents refused to allow him to lie down and continued to interrogate him even though he had just been released from the hospital with instructions to “rest quietly for a day.” I concluded that although petitioner may have experienced some discomfort, his allegations did not support the drawing of a reasonable inference that respondents subjected him to a substantial risk of serious harm in violation of the due process clause of the Fourteenth Amendment. Petitioner has filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

In his motion, petitioner makes several arguments: (1) respondents' failure to follow his after care instructions demonstrates deliberate indifference to petitioner's health and safety; (2) sleep is necessary in order to function; (3) the police report shows that respondents knew petitioner was in pain; (4) the court overlooked petitioner's claim that respondents broke their promise to let him lie down after he answered their questions. None of petitioner's arguments persuade me that I erred in dismissing this case.

With respect to petitioner's first argument, I concluded in the February 5 order that respondents did not disregard the hospital's instructions by asking petitioner questions. "Petitioner's after-care instructions were only that he should 'rest quietly for a day,' not that he could not speak or answer questions." Feb. 5 Order, dkt. #3, at 7. Even if I agreed with petitioner that respondents kept him from resting, it would not change my conclusion that he had failed to state a claim. Not every failure to follow a doctor's recommendations is a violation of the Constitution. Rather, the Court of Appeals for the Seventh Circuit has held that failing to follow a doctor's prescription constitutes deliberate indifference only when the officials know that disregarding it could impose a substantial risk of serious harm on the detainee. Zentmyer v. Kendall County, 220 F.3d 805, 811-12 (7th Cir. 2000). There are no allegations in petitioner's complaint suggesting that petitioner was being exposed to a substantial risk of harm simply by sitting up and speaking or that respondents were aware of such a risk.

Second, I agree with petitioner that sleep is an important part of maintaining health. However, petitioner alleges that he was deprived of sleep for only two hours. I cannot conclude that such a minimal deprivation would subject petitioner to a substantial risk of serious harm.

Third, whether or not respondents knew that petitioner might be experiencing pain is not determinative. Petitioner was injured before he encountered respondents and was treated in the hospital for his injuries. He does not allege that respondents caused or exacerbated his pain or even that he asked respondents for pain medication. I am aware of no authority holding that it is a violation of due process to question a pretrial detainee unless he is completely comfortable.

Finally, although it is certainly regrettable that respondents did not follow through on their promise to allow petitioner to lie down after he answered their questions, I cannot conclude that it amounted to a constitutional violation. The due process clause prohibits officers from punishing pretrial detainees; it does not prohibit them from breaking promises. Because nothing in petitioner's motion suggests that he was subjected to a substantial risk of serious harm, I will deny his motion to alter or amend the judgment.

A timely filed Rule 59 motion extends the time for filing a notice of appeal, if an appeal is to be taken, to thirty days from the date of the entry of the order disposing of the Rule 59 motion. See Fed. R. App. P. 4(a)(4)(A)(iv). Therefore, petitioner has thirty days

from the date of entry of this order in which to file a notice of appeal.

ORDER

IT IS ORDERED that petitioner Childeric Maxy's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED.

Entered this 23rd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge