

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

JAMES JENKINS,

Petitioner,

v.

FREDDRICK WILSON and
MR. BANKSON, Dane County Deputy Sheriffs,

Respondents.

ORDER

05-C-609-C

This is a proposed civil action for declaratory and monetary relief under 42 U.S.C. § 1983. Petitioner James Jenkins, an inmate at the Dane County Jail in Madison, Wisconsin, contends that respondents violated his constitutional rights under the Eighth Amendment of the United States Constitution when they physically assaulted him without provocation.

In an order dated October 31, 2005, I concluded that petitioner does not have the means to make an initial partial payment of the filing fee and that his request for leave to proceed in forma pauperis on his complaint would be taken under advisement.

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when the litigant is a prisoner, the court must dismiss the complaint if the claims contained in it, even when read broadly, are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner James Jenkins is an inmate at the Dane County Jail in Madison, Wisconsin. Respondents Freddrick Wilson and Mr. Bankson are Dane County deputy sheriffs.

On or about August 22, 2005, petitioner demanded that respondents bring him a grievance form so he could complain about a cell search. Respondents ordered petitioner to step inside his cell, and told him they could “do what they want when they want.” Petitioner told them he thought “that was some bull.” The cell door had almost closed when respondent Bankson told petitioner to step outside his cell. Instead, petitioner stated, “Close my door like you was going to.”

Respondent Bankson then looked at respondent Wilson and said, “You going in?”

“Yeah,” Wilson replied.

Petitioner turned his back to the door and looked over his right shoulder.

Respondent Wilson then grabbed petitioner in a “bear hug” and held him down on his bed. While respondent Wilson held petitioner down, respondent Bankson rushed into petitioner’s cell and punched him seven to eight times on the right side of his face, causing pain and dizziness. Petitioner could not shield himself from respondent Bankson’s blows because respondent Wilson continued to restrain him.

After respondent Bankson hit petitioner, respondent Wilson punched him at least ten times in the same areas of his face and head. Respondent Bankson then began hitting petitioner in the head with his knee. Altogether, petitioner was hit at least twenty-five times along the right side of his face and head.

During the beating, petitioner began to black out and almost lost consciousness. Both respondents were wearing rings and, as a result of the blows, petitioner’s head was “busted up” and his right eye was scraped and swollen.

OPINION

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). The Eighth Amendment's prohibition of cruel and unusual punishment draws its meaning from the evolving standards of decency that mark the progress of a maturing society. Id. at 8. When prison officials maliciously and sadistically use force to cause harm, these standards of decency always are violated. Id. at 9. 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. Whitley v. Albers, 475 U.S. 312, 321 (1986); Outlaw v. Newkirk, 259 F. 3d 833, 837 (7th Cir. 2001).

Petitioner contends that respondents assaulted him repeatedly, without provocation, causing him pain, swelling, and scrapes. Although petitioner acknowledges that he verbally challenged the orders given him by respondents, none of his alleged statements permit an inference to be drawn that his behavior required the amount and type of physical force respondents are alleged to have exerted. Therefore, petitioner has stated a claim that respondents violated his Eighth Amendment right to be free of excessive force when they engaged in an unprovoked, unnecessary physical assault. Petitioner will be granted leave to proceed on this claim.

ORDER

IT IS ORDERED that

1. Petitioner is GRANTED leave to proceed in forma pauperis on his claim that respondents used excessive force against him in violation of the Eighth Amendment.

2. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

3. Petitioner should keep 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.

_____ 4. The unpaid balance of petitioner's filing fee is \$250.00; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2) when he has the means to do so.

5. Because petitioner is proceeding in this action in forma pauperis, the court will

make arrangements with the United States Marshal to complete service of process on the respondents.

Entered this 4th day of November, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge