

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

LUIS VASQUEZ,

Plaintiff,

v.

ORDER

06-C-743-C

PHIL KINGSTON, Warden;
STEVEN SCHUELER, Security Supervisor, Capt.;
CURT JANSSEN, Security Supervisor, Capt.;
CAPT. GEMPELER, Security Supervisor;
BRUCE SIEDSCHLAG, HSC Manager;
OFFICER BAUER, Lieutenant;
BELINDA SCHRUBBE, HSU Manager;
GARY ANKARLO, Ph.D., PSUS;
SGT. PREIST; SGT. MEYER; SGT. GUTJAHR;
SGT. TONY; SGT. HILBERT; OFFICER II GUNRATT;
OFFICER II ROLINS; OFFICER KMIECIK;
OFFICER NICKEL;
and DOES 1-10,
all in their individual and official capacities,

Defendants.

In an order dated March 14, 2007, I screened plaintiff's complaint under 28 U.S.C. § 1915A, allowing plaintiff to proceed on several claims and dismissing several others. In addition, I stayed a decision on three claims because I could not determine from plaintiff's allegations whether those claims were viable. I directed plaintiff to file an addendum to his

complaint, explaining these three claims more fully. Plaintiff has filed the addendum.

Plaintiff's first stayed claim is that defendants Sgt. Hilbert and Steven Schueler denied plaintiff medical care after the August 17 use of force, in violation of the Eighth Amendment. I asked plaintiff to explain why he believed these defendants knew he needed immediate medical treatment. In his addendum, plaintiff alleges that he told Hilbert and Schueler that he had pain in his wrists and showed them bruises and fresh cuts on his arms and legs. (As he did in his complaint, plaintiff includes allegations about Officer Spurgeon. However, as I noted in the screening order, Spurgeon is not a defendant in this case, a conclusion that plaintiff does not challenge or seek to change in his addendum. Accordingly, I have not considered any allegations relating to Spurgeon.)

Plaintiff's additional allegations are sufficient to state a claim under the Eighth Amendment. Plaintiff has alleged enough to put defendants on notice of his claim without alleging facts making it impossible for him to succeed. Edwards v. Snyder, No. 04-2548, – F.3d –, 2007 WL 675506, *2 (7th Cir. Mar. 7, 2007) (identifying these two reasons as only grounds under which it is appropriate to dismiss claim at screening). Accordingly, plaintiff may proceed on this claim. At later stages of the proceedings, plaintiff will have to adduce evidence that would permit a reasonable jury to infer both that he had a “serious medical need,” meaning that he needed (as opposed to wanted) medical treatment immediately after the use of force *and* that defendants Schueler and Hilbert were actually aware (rather than

that they *should have* been aware) that plaintiff needed such treatment.

The second stayed claim is that multiple unnamed officers denied plaintiff medical care later the same day. I asked plaintiff to allege facts more clearly identifying the officers and explaining why he believed they were aware of his alleged need for medical treatment. In his addendum, plaintiff says that he told four officers during first and second shift that he needed to see a nurse because his wrists were bleeding and he was in “severe pain,” but each of the officers ignored his request. One of the officers was Sergeant Preist. (Plaintiff is already proceeding against Sergeant Preist on another claim.) However, with respect to the other three officers, plaintiff does not remember their names, the approximate time of day he made the requests or any other information that would help to identify them.

I conclude that plaintiff has stated a claim against Preist. Ignoring a request for medical treatment could give rise to liability under the Eighth Amendment. However, I will not allow plaintiff to proceed on his claim against the unnamed defendants. It is true, as I acknowledged in the screening order, that district courts must assist pro se litigants in determining the identities of unnamed defendants. Donald v. Cook County Sheriff's Dept., 95 F.3d 548, 555 (7th Cir. 1996). But in this case, no amount of assistance would enable plaintiff to discover the names of the other three officers. Plaintiff does not remember the first or last names of the officers, when he interacted with them, their job titles, physical descriptions or any other identifying information. Even if plaintiff were to obtain the names

of every officer who worked on his unit on August 17, 2005, he would have no way of discerning which of those officers might have been the three who denied his requests for medical treatment. Accordingly, these claims will be dismissed. If plaintiff later learns or remembers more information about these officers, he may seek leave to amend his complaint at that time.

The last stayed claim is that defendant Gary Ankarlo, a prison psychiatrist, refused to provide plaintiff with mental health treatment after incidents involving uses of force and body cavity searches. I asked plaintiff to provide additional facts about what he told defendant Ankarlo about his mental health needs, what he asked Ankarlo to do and how Ankarlo responded to these requests. In his addendum, plaintiff alleges that he wrote defendant Ankarlo after the second incident, complaining that he had been sexually assaulted, which significantly exacerbated his mental illness and caused him great emotional distress. Ankarlo did not meet with plaintiff for more than two weeks, at which time plaintiff requested daily psychotherapy. Since December 2006, the only treatment plaintiff has received is a short clinical interview with a psychologist in late December, who told plaintiff that he (the psychologist) and defendant Ankarlo would discuss treatment options for plaintiff.

I note at the outset that the Eighth Amendment would require prison officials to provide prisoners with daily psychotherapy in very few circumstances, if any. Defendant

Ankarlo was required to take reasonable measures to address known risks of harm to plaintiff's mental health; plaintiff was not entitled to ideal care or whatever level of treatment that he believed was appropriate. However, plaintiff alleges that defendant Ankarlo has provided him with virtually no treatment, despite plaintiff's insistence that he was severely distraught. If plaintiff can show later that he had serious mental health needs and that defendant Ankarlo actually believed that plaintiff needed more treatment than was being provided, he may be able to prevail on this claim. Plaintiff may proceed against defendant Ankarlo on a claim that he denied plaintiff mental health care in violation of the Eighth Amendment.

ORDER

IT IS ORDERED that

1. Plaintiff Luis Vasquez is DENIED leave to proceed on his claim that three unnamed defendants refused to provide him with adequate medical care after the August 17 use of force. These claims are DISMISSED WITHOUT PREJUDICE to plaintiff's refiling them at a later date.

2. Plaintiff is GRANTED leave to proceed on the following claims:

(a) Defendants Sgt. Hilbert, Steven Schueler and Sgt. Preist denied plaintiff medical care

after the August 17 use of force; and

(b) defendant Gary Ankarlo refused to provide plaintiff with adequate mental health treatment after the uses of force and body cavity searches.

3. I allowed plaintiff to proceed on the following claims in the March 14 screening order:

(a) multiple unnamed officers used excessive force against plaintiff on August 17, 2005; plaintiff was allowed to proceed against defendant Phil Kingston for the purpose of discovering the identities of the unnamed officers;

(b) defendant Hilbert directed other officers to use excessive force against plaintiff on August 17, 2005;

(c) defendants Officer Nickel and Officer Kmiecik conducted a manual body cavity search without a legitimate penological reason on August 21, 2006;

(d) defendants Curt Janssen, Sgt. Tony and Sgt. Gutjahr failed to intervene to stop an unconstitutional manual body cavity search on August 21, 2006;

(e) defendants Officer Bauer, Officer Gunratt, Officer II Rolins, Capt. Gempeler and Sgt. Meyer were involved in an unconstitutional manual body cavity search and excessive use of force on November 3, 2006;

(f) an unknown defendant (or defendants) was deliberately indifferent to plaintiff's mental health by depriving him of psychotropic medication for approximately one week in

June 2006; plaintiff was allowed to proceed on this claim against defendant Belinda Schrubbe for the purpose of discovering the party or parties who may be liable; and

(g) an unknown defendant (or defendants) was deliberately indifferent to plaintiff's health by depriving him of lithium for approximately one week in the fall of 2006. Plaintiff was allowed to proceed against defendants Schrubbe and Bruce Siedschlag for the purpose of discovering the party or parties who may have been aware that plaintiff was going without needed medication.

4. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint, addendum to the complaint and this court's orders in this case are being sent today to the Attorney General for service on defendants.

Entered this 2nd day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge