IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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STEPHEN WENDELL JONES,

Plaintiff,

v.

SECRETARY M. FRANK, WDOC,
in his official capacity;
WARDEN R. SCHNEITER, WSPF;
G. BOUGHTON, a Security Director;
B. KOOL, a Unit Manager;
P. HUIBREGTSE, Under Warden;
WSPF PROGRAMS/SOCIAL SERVICES DEPARTMENTS SUPERVISORS,
WSPF ECHO UNIT TEAM; and
DOES 1-18, in their official and individual capacities,,

Defendants.

OPINION AND ORDER

07-C-141-C

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Plaintiff Stephen Wendell Jones, a prisoner, contends that defendants are violating his Eighth Amendment right to personal safety by forcing him to congregate with other prisoners who wish to harm him, including gang members and prisoners on whom he has "snitched." In a previous order, I noted that at least three lawsuits filed by plaintiff had been dismissed because they were legally frivolous or for failure to state a claim upon which relief may be granted. However, I concluded that plaintiff could proceed under the in forma

pauperis statute because he alleged that he was in "imminent danger," within the meaning of 28 U.S.C. § 1915(g). I directed plaintiff to make an initial partial payment of $1.57, which the court has received.

Because plaintiff is a prisoner, I am required under the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. I conclude that plaintiff has stated a claim upon which relief may be granted on his claim that defendants Frank, Schneiter, Boughton, Kool and Huibregtse are failing to protect plaintiff as required by the Eighth Amendment.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his amended complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Stephen Wendell Jones is a prisoner in the Echo Unit at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Defendant Richard Schneiter is the warden of the prison; defendant Peter Huibregtse is the deputy warden; defendant G. Boughton is the security director; defendant B. Kool is the Echo unit manager. Defendant Matthew

Frank is Secretary of the Wisconsin Department of Corrections. All of the defendants are responsible for the safe housing of prisoners at the Wisconsin Secure Program Facility.

Plaintiff arrived at the prison in May 2000. He is currently assigned to the High Risk Offender Program, which is divided into "red," "yellow" and "green" phases. Plaintiff is scheduled to complete the yellow phase in mid-May, when he will be assigned to phase green.

In phase yellow, defendants require prisoners to congregate with other prisoners outside their cell in education and programming groups. Phase green involves even more compulsory congregate activity. Prisoners are assigned jobs with other prisoners on phase green. Once a prisoner is on phase green, he remains there for a minimum of 32 weeks. Prisoners are subject to discipline if they refuse to work or complete programming.

Plaintiff is known throughout the prison as a "snitch" in part because he has sent letters to prison officials and prosecutors about other prisoners. These prisoners include violent gang members who are in either the yellow or green phase. Various prisoners at the Secure Program Facility have threatened to harm plaintiff or have told prisoner gang members the fact that he is a "snitch."

Currently, defendants require plaintiff to congregate with violent prisoners who have threatened to harm him. Prisoner gang members and those associated with them have told plaintiff that "serious harm [is] awaiting" him as a result of his snitching both at the Secure

Program Facility and other prisons in the state. Sometimes these threats are made in front of prison staff members. At least two prisoner gang members on phase yellow have threatened plaintiff with physical harm. Other gang members have called for "somebody" to "get" plaintiff once he is on phase green. One correctional officer told plaintiff that he will never return to the streets, which plaintiff interpreted as meaning that plaintiff will not make it out of prison alive.

On January 26, 2007, plaintiff attended math class with three other prisoners. During the class, another prisoner attempted to assault plaintiff because, plaintiff believes, of his reputation as a snitch. Plaintiff later reported the incident to an officer at his cell front, which other prisoners over heard. Later, fellow gang members of the accused prisoner "vowed vengeance."

Plaintiff has filed grievances in which he complained that prisoner gang members who have access to him have threatened to harm him. Defendant Peter Huibretgtse has reviewed at least one of these grievances. Plaintiff complained to defendant Kool in person about these problems, but Kool refused to take any action. All of the defendants have refused to resolve plaintiff's safety concerns. Their only response is to tell plaintiff to "fill out DOC-1803s." (Although plaintiff does not explain specifically what these forms are, they appear to be requests for separation from particular prisoners).

DISCUSSION

I understand plaintiff to contend that defendants are violating his rights under the Eighth Amendment by forcing him to congregate with other prisoners who are likely to seriously harm him. Plaintiff will be allowed to proceed on this claim.

The Supreme Court recognized in Farmer v. Brennan, 511 U.S. 825 (1994), that "prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." See also Borello v. Allison, 446 F.3d 742, 747 (7th Cir. 2006). Further, a prisoner need not wait until he is assaulted or worse before obtaining injunctive relief. Farmer. 511 U.S. at 845; Helling v. McKinney, 509 U.S. 25, 33-34 (1993). Under the test set forth in Farmer, the question is whether prison officials are "deliberately indifferent" to a "substantial risk of serious harm" to the prisoner's safety. In practical terms, a claim under Farmer has four elements:

- Is there a risk that plaintiff will be seriously harmed?
- Is the risk a substantial one?
- Is the prison official aware of the risk?
- If the prison official does know of the risk, has he taken reasonable measures to avert the risk?

Fisher v. Lovejoy, 414 F.3d 659, 662 (7th Cir. 2005); Lewis v. Richards, 107 F.3d 549, 553 (7th Cir. 1997); Langston v. Peters, 100 F.3d 1235, 1238 (7th Cir. 1996).

At this stage of the case, plaintiff is not required to plead facts that, if true, would entitle him to relief. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). Rather, at the screening stage, a complaint is subject to dismissal for failure to state a claim under two circumstances: (1) if the plaintiff has failed to plead enough facts to put the defendants on notice of his claim so that they can prepare a defense; (2) if the facts plaintiff alleges show "beyond doubt" that he cannot prevail on his claim. Edwards v. Snyder, 478 F.3d 827, 830 (7th Cir. 2007).

First, plaintiff has put the named defendants on notice of his claim by alleging that he is at risk of being assaulted by other prisoners and that defendants are refusing to address his concerns appropriately. Although plaintiff does not identify precisely how each defendant was involved in failing to protect him, construing his complaint liberally, he alleges generally that each of the named defendants is aware that he is in danger but refuses to take action to protect him.

The same cannot be said for "Does 1-18." If a plaintiff does not know the names of particular defendants, he is not required to identify them by name in his complaint. Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). At a minimum, however, plaintiff must describe those individuals and allege enough facts about them to suggest a basis for liability. Plaintiff has failed to do this. In fact, plaintiff does not include any substantive allegations about any Doe defendants. Accordingly, the unnamed

defendants will be dismissed.

I come to the same conclusion with respect to "WSPF Programs/Social Services Departments Supervisors" and "WSPF Echo Unit Team," but for a somewhat different reason. Plaintiff must name as defendants individuals or other entities that may be served with a complaint. Neither of these groups meet that standard. Rather, they are simply a descriptive label that plaintiff has attached to a group of individuals. If plaintiff believes that particular individuals within those groups are liable for failing to protect him, he may amend his complaint to include allegations against those individuals. If he does not know their names, he must (1) provide adequate descriptions of them to allow them to be identified at a later stage of the lawsuit; and (2) describe their conduct in sufficient detail to suggest a basis for liability. However, at this time, the complaint will be dismissed as to "WSPF Programs/Social Services Departments Supervisors" and "WSPF Echo Unit Team."

With respect to the second pleading requirement identified in Edwards, I cannot conclude that plaintiff's allegations show that he cannot prevail on an Eighth Amendment claim. The potential harm at issue is sufficiently serious; plaintiff alleges that he is at risk of physical assault or worse. E.g., Peate v. McCann, 294 F.3d 879, 882 (7th Cir. 2002) (prison official could be liable under Eighth Amendment for failing to prevent prisoner from hitting other prisoner with laundry bag filled with hard objects).

With respect to whether the risk of harm is substantial, plaintiff alleges that he is

forced to congregate with prisoners who wish to harm him, including gang members and prisoners on whom he has "snitched." Recently, the Supreme Court acknowledged that "informing on . . . gang activities can invite one's own death sentence." Wilkinson v. Austin, 545 U.S. 209, 227 (2005). More generally, a number of courts have recognized that "snitches" may be a at risk for violent reprisals. E.g., Adames v. Perez, 331 F.3d 508, 514 (5th Cir. 2003) ("an individual who divulges secret information about his gang might be a target of violence by fellow gang members."); State v. Robb, 723 N.E.2d 1019, 1035 (Ohio 2000) (noting that several prisoners were murdered by gang members after acting as informants on gang); Alvarado v. Superior Court, 60 Cal. Rptr. 2d 854, 866 -867 (Cal. Ct. App. 1997) ("'Snitching" against the Mexican Mafia appears to be a capital offense in the parallel society that gangs are recognized as having created within this state's penal institutions."); Mitchell v. Fairman, 1997 WL 224990 (N.D. Ill. 1997) (prisoner assaulted after "snitching" on gang members); United States v. Pimentel, 346 F.3d 285, 300 (2d Cir. 2003) (noting testimony of gang member that punishment for snitching on gang was "execution"); United States v. Rollack, 1999 WL 104806, *15 (4th Cir. 1999) (inmate testifying against gang leader had to be relocated after note was found ordering gang members to "kill all snitches").

It may be that, in this particular case, plaintiff's activities as an informant have not placed him at a substantial risk of harm. However, I cannot say that plaintiff will be unable

to prove that they have.

With respect to defendants' knowledge of the risk, if plaintiff's complaint is construed liberally, he alleges each of the defendants is aware of the threats he has received and his status as an informant. With respect to the reasonableness of defendants' response, plaintiff alleges that defendants have done nothing but tell him to fill out forms requesting separation from individual prisoners.

Prison officials are not required to guarantee a prisoner's safety or take whatever action the prisoner requests. E.g., Lewis, 107 F.3d at 553-54 (no Eighth Amendment violation for failing to prevent second assault when plaintiff was moved to different part of prison after first assault). However, simply taking *some* action in response to a substantial risk of harm is not necessarily sufficient; "that response must be reasonable." Borello, 446 F.3d at 749. In this case, it is too early to tell whether defendants' response was reasonable as a matter of law. If the risk to plaintiff's safety is limited to a few individuals, separating plaintiff from those individuals might be a reasonable response. However, if the risk is as widespread as plaintiff suggests, additional precautions might be required.

Because plaintiff has alleged enough facts to place defendants on notice of his claim and he has not alleged facts showing that he cannot prevail, I will allow him to proceed on a claim that defendants Frank, Schneiter, Boughton, Kool and Huibregtse are violating his rights under the Eighth Amendment by failing to protect him from a substantial risk of

physical assault.

As I noted in the March 12, 2007 order, plaintiff has styled his complaint as a motion for a preliminary injunction. In that order, I told plaintiff that this court requires that a party seeking emergency injunctive relief follow specific procedures for obtaining such relief and that the court will not consider a motion for a preliminary injunction unless these procedures are followed. I sent plaintiff a document titled Procedure To Be Followed On Motions For Injunctive Relief, which explains what plaintiff must do to file a motion for a preliminary injunction. Because plaintiff has not yet followed these procedures (or filed any other documents in support of a motion for a preliminary injunction), I cannot consider plaintiff's request for preliminary injunctive relief.

ORDER

IT IS ORDERED that

1. Plaintiff Stephen Wendell Jones is GRANTED leave to proceed on his claim that defendants Matthew Frank, Richard Schneiter, G. Boughton, B. Kool and P. Huibregtse are violating his Eighth Amendment rights by failing to protect him from a substantial risk of assault by other prisoners.

2. Plaintiff's complaint is DISMISSED as to "Does 1-18," "WSPF Programs/Social Services Departments Supervisors" and "WSPF Echo Unit Team."

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

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. The unpaid balance of plaintiff's filing fee is $ 345.09; plaintiff is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

6. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants.

7. Plaintiff submitted a large number of documents with his complaint, consisting mostly of documentation of exhaustion of administrative remedies. Those papers are not considered to be a part of plaintiff's complaint. Because many of them appear to be original

documents, I have made a copy of them for the file and am returning the originals to plaintiff.

Entered this 19th day of April, 2007.

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