IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

ALLEN PAYETTE,

Plaintiff,

v.

MEMORANDUM and ORDER

SHERIFF HOENISCH, BOB DICKMAN, WILLIAM BEAUDRY, SETH WISKOW, DEBRA GLEASON, CARY PELLOWSKI, SHEILA WESTCOTT, MICHAEL SCHAEFER and DENNIS ROTHERING,

07-C-242-S

Defendants.

Plaintiff Allen Payette was allowed to proceed on his First and Eighth Amendment claims against defendants Sheriff Hoenisch, Bob Dickman and William Beaudry. In his complaint he alleges that while he was confined at the Marathon County Jail the defendants placed him in restraints for 24 hours for thirty days, were deliberately indifferent to his serious medical need, denied him access to the courts and denied him a Bible. On August 15, 2007 the Court allowed him to name six John Doe defendants that he alleges were personally involved in these alleged deprivations of his Constitutional rights. The newly named defendants are Seth Wiskow, Debra Gleason, Cary Pellowski, Sheila Westcott, Michael Schaefer and Dennis Rothering.

On August 13, 2007 defendant Sheriff Hoenisch, Bob Dickman and William Beaudry moved for summary judgment pursuant to Rule 56,

Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Allen Payette is currently confined at the New Lisbon Correctional Institution, New Lisbon, Wisconsin. At all times material to this action he was confined in the Marathon County Jail, Wausau, Wisconsin.

Defendant Randy Hoenisich is the elected Sheriff of Marathon County. Defendant Bob Dickman is the Jail Administrator for the Marathon County Jail (Jail). Defendant William Beaudry is a corrections officer at the Jail. Defendants Seth Wiskow, Debra Gleason, Cary Pellowski, Sheila Westcott, Michael Schaefer and Dennis Rothering are correctional officers at the Marathon County Jail.

While confined at the Marathon County Jail on September 12, 2006 plaintiff and his fellow inmate damaged jail property by using a homemade chisel to carve concrete from the area surrounding a cell vent. Plaintiff was placed in a glass windowed receiving cell to allow greater observation to prevent additional occurrences.

On September 13, 2006 while plaintiff was in a visitation room his receiving cell was searched and a piece of metal was found that plaintiff had broken from the drinking fountain guard. That same day he also damaged a telephone in an interview room and put parts

of the telephone in his waistband. Jail staff discovered these telephone parts immediately before plaintiff was returned to the receiving cell.

Based on this continued pattern of destructive behavior, defendant Dickman ordered plaintiff to be placed in restraints to prevent further damage to jail property and to prevent him from injuring himself. On September 14, 2006 plaintiff was patted down after a visit with his attorney and he was found to have hidden bunched up toilet paper. On September 16, 2006 plaintiff stated he would cut himself with a dinner spoon. The spoon was taken away from him. That same day he was allowed to exchange three books for three other books in his property.

The restraints were removed from plaintiff on September 18, 2006. On September 21, 2006 plaintiff cut his forearm with a staple. His superficial wound was treated and he was placed on 15 minute suicide watch. A mattress and blanket were provided him. Plaintiff was removed from suicide watch the morning of September 22, 2006.

On October 1, 2006 plaintiff was provided a plastic razor so as to shave. About forty five minutes later he advised correctional officers that he accidentally flushed the razor down the toilet. After a search of the cell and a strip search of plaintiff he was told he would be taken to the hospital for a body cavity search, plaintiff then advised the officers that he had

placed the shaver in his anus. The razor was subsequently removed at the Wausau Aspirus Hospital emergency room. He was returned to the jail.

On October 4, 2006 plaintiff was again taken to the hospital because he reported he had swallowed a staple on September 22, 2006. He remained in the hospital until October 7, 2006 when he was returned to the jail.

On October 10, 2006 plaintiff reported he had swallowed a piece of metal from his cell sink. He was sent to the hospital and returned to the jail. Hospital staff confirmed that plaintiff had swallowed a piece of metal but that it would have to pass through his system naturally.

On his return to the jail plaintiff was placed in restraints. On October 11, 2006 defendant Dickman placed Special Management Conditions on plaintiff because of his continued self-destructive behavior together with his destruction of property. He was placed in leg, waist and wrist restraints except when he used the toilet. Plaintiff remained under these conditions until his transfer to the New Lisbon Correctional Institution on October 17, 2006.

Although plaintiff did not have paper or pencils in his cell after October 11, 2006 he was in court with his attorney the next day for his sentencing. Plaintiff was not allowed a blanket after October 11, 2006 because defendant Dickman concluded it was necessary for security reasons. The receiving cell temperature was

maintained at 68 degrees during plaintiff's confinement. Defendant Dickman was never informed that plaintiff had requested a Bible.

Marathon County Jail contracted with North Central Health Facility to provide mental health care to inmates. During his stay at the Marathon County Jail plaintiff was evaluated and treated by health care providers from this facility. Plaintiff agrees that he was seen by mental health care providers on September 14, 2006.

At some point after October 6, 2006 defendant Dickman became aware that an outside Aspirus physician had provided a written recommendation to plaintiff on October 6th that he should receive a consultation at some point with a forensic psychiatrist while he was in the jail. Defendant Dickman received no recommendation from the North Central Health Facility that such a consultation was medically necessary or that plaintiff needed immediate psychiatric hospitalization.

MEMORANDUM

Plaintiff claims that defendants violated his First and Eighth Amendment rights. In opposing defendants' motion for summary judgment plaintiff cannot rest on the mere allegations of his pleadings but must submit evidence that there is a genuine issue of material fact for trial. Although plaintiff has submitted an opposition brief and exhibits, he has failed to submit any evidence which contradicts the affidavits submitted by the defendants.

There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Plaintiff claims that he was subjected to cruel and unusual punishment when he was placed in restraints. The intentional, wanton or unnecessary infliction of pain violates the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 8 (1982). In Hudson, the Court held that the core judicial inquiry is whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically to cause harm.

In his complaint plaintiff alleged that he was in restraints for thirty days. The undisputed facts indicate that he was in restraints from 9/13-9/18, from 9/21-9/22 and from 10/10 through 10/17 for a total of 13 days. It is undisputed that the decision to place plaintiff in restraints was made by defendant Dickman based on plaintiff's destruction of property and his self-destructive behavior. Plaintiff has submitted no evidence that defendant Dickman maliciously or sadistically caused him harm. Plaintiff was placed in restraints to protect him and to stop his continuing damage to jail property which included a wall, a water fountain and a telephone. Plaintiff was not subjected to cruel and unusual punishment when he was placed in restraints by defendant Dickman at the Marathon County Jail. Id., at 6-7.

In Rhodes v. Chapman,452 U.S. 337, 341 (1981) the Court held that the Eighth Amendment requires conditions of confinement which

do not deny inmates the minimal civilized measure of life's necessities.

In Farmer v. Brennan, 511 U.S. 825, 837-838 (1994), the Court stated that "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety." Defendant Dickman made the decision to confine plaintiff in a receiving cell for observation. There is no evidence that plaintiff's conditions of confinement in the receiving cell caused an excessive risk to plaintiff's health or safety which the defendant disregarded. Accordingly, plaintiff was not subjected to cruel and unusual punishment in violation of the Eighth Amendment. Defendants are entitled to judgment in their favor on this claim.

Plaintiff claims that defendants were deliberately indifferent to his serious mental health needs. The Eighth Amendment prohibits deliberate indifference to an inmate's serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is a subjective standard which requires that the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

It is undisputed that plaintiff had mental health issues. He was seen by the jail's mental health care providers. He was treated various times at an outside hospital for self-destructive behavior. On October 6, 2006 one of the doctors at the hospital recommended that plaintiff receive a forensic psychiatric consultation at the jail. He did not receive a consultation prior to his October 17, 2006 transfer.

There is no evidence that any of the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to that risk. See Board v. Farnham, 394 F.3d 469, 478 (7th Cir. 2005). Plaintiff received medical treatment for each incident of self destructive behavior and was seen by the mental health care providers from the North Central Health Care Facility. Defendants are entitled to judgment in their favor on this claim.

Plaintiff was also allowed to proceed on his claim that he was denied access to the Courts. In order to prevail on a claim of denial of access to the courts plaintiff must demonstrate that he was injured by the denial of access. Lewis v. Casey, 518 U.S. 343, 351 (1996). At the time plaintiff was confined at the jail he was represented by counsel. It is undisputed that plaintiff was not denied access to the Courts. Accordingly, defendants are entitled to judgment in their favor on this claim.

In Cruz v. Beto, 405 U.S. 319(1972) the Court held that prison administrators are required to provide inmates a reasonable

opportunity to practice their religious beliefs. Although plaintiff alleges he was denied a Bible he does not allege that he needed a bible to practice his religious beliefs or what those beliefs were. The undisputed facts do not indicate that plaintiff was denied a reasonable opportunity to practice his religion. Defendants are entitled to judgment in their favor on this claim.

The motion for summary judgment of defendants Hoenisch, Dickman and Beaudry will be granted. Since the remaining defendants were included in the original complaint as John Doe defendants they will also be dismissed because plaintiff's constitutional rights were not violated. Accordingly, as a matter of law all defendants are entitled to judgment in their favor on plaintiff's First and Eighth Amendment claims.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion of defendants Sheriff Hoenisich, Bob Dickman and William Beaudry is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants Sheriff Hoenisch, Bob Dickman, William Beaudry, Seth Wiskow, Debra Gleason, Cary Pellowski, Sheila Westcott, Michael

Schaefer and Dennis Rothering against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 11th day of September, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ
District Judge