

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

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DENNIS RICHARDSON,

Plaintiff,

v.

RICK RAEMISCH, Secretary,  
Department of Corrections,

Defendant.  
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OPINION and ORDER

08-cv-200-bbc

In this civil action brought under 42 U.S.C. § 1983, plaintiff Dennis Richardson asserts that he is receiving inadequate treatment for post-traumatic stress disorder, in violation of his rights under the Eighth Amendment to the United States Constitution. Plaintiff is a prisoner who is presently housed at the Waupun Correctional Institution in Waupun, Wisconsin. He argues that the Department of Corrections, of which defendant Rick Raemisch is the secretary, should offer group counseling for prisoners who suffer from post-traumatic stress disorder.

Although plaintiff has paid the filing fee in full, the court must screen his complaint pursuant to 28 U.S.C. § 1915A. In screening, the court must examine plaintiff's claims,

interpreting them broadly, and dismiss any that 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.

From a review of plaintiff's complaint and that materials attached to it, I understand him to allege the following.

### FACTS

Plaintiff Dennis Richardson is a prisoner who is housed at the Waupun Correctional Institution. He was housed previously at the Fox Lake Correctional Institution in Fox Lake, Wisconsin. Defendant Rick Raemisch is the secretary of the Wisconsin Department of Corrections. The Wisconsin Department of Corrections operates all of the prisons in the state of Wisconsin. No prison in the state offers group counseling for post-traumatic stress disorder.

Plaintiff has been diagnosed with post-traumatic stress disorder. His condition is becoming more severe. In 1995, he was found to be 10% disabled. In 1999, he was 30% disabled. In 2006, he was 50% disabled. Plaintiff's post-traumatic stress disorder causes him to have persistent severe nightmares and anger management problems. Plaintiff's anger management problems cause him to fight and break prison rules, which results in discipline.

Plaintiff suffers from a severe heart condition, which is worsened by his post-traumatic stress disorder. His heart condition makes it inadvisable for plaintiff to take psychiatric medication for his post-traumatic stress disorder.

Plaintiff has requested treatment for his post-traumatic stress disorder for the last ten years. When plaintiff was housed at the Fox Lake Correctional Institution in 2003, he attended two group counseling sessions for post-traumatic stress disorder. These sessions were cancelled abruptly and no additional group counseling sessions have been provided to plaintiff, either at the Fox Lake Correctional Institution or the Waupun Correctional Institution, where plaintiff is presently housed.

While plaintiff was housed at the Fox Lake Correctional Institution, he wrote to Dr. Elliott, the PSU Supervisor, at least twice regarding his interest in treatment for his post-traumatic stress disorder. In these letters, plaintiff explained that his treating physician determined that it was not advisable for plaintiff to use drugs to treat his post-traumatic stress disorder because of his heart condition and asked for information about counseling.

## DISCUSSION

### A. Relief Unavailable in this Lawsuit

As an initial matter, I note that one of the forms of relief that plaintiff seeks in this action is release on parole so that he may receive treatment at the veterans' hospital. In

addition, I understand him to allege that his prison sentence will be extended because his untreated post-traumatic stress disorder causes him to commit disciplinary infractions that have resulted in his loss of good time credits. Under no circumstances can plaintiff achieve either form of relief in this lawsuit.

First, granting plaintiff's request for release would almost certainly violate 18 U.S.C. § 3626, which states that injunctions in civil actions brought by prisoners "shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." The alleged constitutional violation in this case will be remedied sufficiently if plaintiff receives adequate mental health care treatment from the Department of Corrections. There is no reason to believe that his release and treatment at the Veterans' Administration Hospital is necessary for him to receive this treatment.

To the extent that plaintiff is seeking release from prison sooner because he never should have lost good-time credits, he should be aware that such relief is not available in an action brought under 42 U.S.C. § 1983. Instead, a petition for a writ of habeas corpus under 28 U.S.C. § 2254 "is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release." Heck v. Humphrey, 512 U.S. 477, 481 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)). If plaintiff wishes to pursue his claim for speedier release, he will have to do so in a petition for a writ of habeas corpus filed after he has exhausted all the state court remedies

available to him. 28 U.S.C. § 2254.

B. Lack of Treatment for Post-Traumatic Stress Disorder

Next, I understand plaintiff to allege that he suffers from severe post-traumatic stress disorder, for which he is receiving inadequate treatment. The Eighth Amendment to the United States Constitution requires the government “to provide medical care for those whom it is punishing by incarceration.” Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To prevail ultimately on a claim under the Eighth Amendment, a prisoner must prove that prison officials engaged in “acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle, 429 U.S. at 106.

A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584 -85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects the detainee to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.

1997).

Thus, under this standard, plaintiff's claim is analyzed in three parts:

- (1) Whether plaintiff had a serious mental health care need;
- (2) Whether defendant knew that plaintiff needed care; and
- (3) Despite his awareness of the need, whether defendant failed to take reasonable measures to provide the necessary care.

Plaintiff does not have to allege the facts necessary to establish each of these elements at the pleading stage, but they provide the framework for determining whether plaintiff has alleged enough to give defendants notice of his claims and whether there is a set of facts consistent with plaintiff's allegations that would entitle him to relief. Kolupa v. Roselle Park District, 438 F.3d 713, 715 (7th Cir. 2006); Doe v. Smith, 429 F.3d 706, 708 (7th Cir. 2005).

It is well settled that the Eighth Amendment protects the mental, as well as physical health of prisoners. E.g., Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001); Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987). Plaintiff's post-traumatic stress disorder may well constitute a serious medical condition that warrants some form of treatment. He alleges it left him 50% disabled in 2006, is worsening and causes him to experience regular nightmares. Plaintiff asserts that medication is "not advisable" in his case because of his heart condition. Therefore, he argues, he requires counseling services as an

alternative treatment. The remaining question is whether there is any indication that defendant was deliberately indifferent to his need for treatment.

It is somewhat difficult to discern what plaintiff's theory of liability is with respect to defendant. To the extent that plaintiff wishes to sue defendant for other prison officials' refusal to adequately treat his serious mental health care needs, this claim is not viable under § 1983. A supervisor may not be held liable simply because he had authority over someone else that violated a prisoner's constitutional rights. Rather, the plaintiff must allege facts suggesting that the supervisor's actions (or his failure to act) helped to cause the constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995).

Alternatively, it is possible to read plaintiff's allegations as a challenge to a de facto policy of the Department of Corrections to offer no group counseling for post-traumatic stress disorder. A prison official may be liable under § 1983 if he creates or implements an unconstitutional policy or practice. Hammer v. Ashcroft, 512 F.3d 961, 970 (7th Cir. 2008).

Although plaintiff may be unable to take medication for post-traumatic stress disorder, it is not plausible that the only viable alternative is group counseling sessions, so that the failure to provide such sessions is indicative of deliberate indifference to his serious mental health care needs. For example, a policy disallowing group counseling does not violate the Constitution if individual counseling or some other adequate form of treatment

is available to prisoners who are unable to take medication. From plaintiff's complaint, I cannot reasonably infer that defendant is responsible for a policy to refuse adequate treatment to prisoners who suffer from severe post-traumatic stress disorders and are unable to take medication. Because the only prison official plaintiff named as a defendant in this lawsuit is Raemisch, plaintiff's complaint will be dismissed.

However, because plaintiff's complaint suggests that he may have a viable claim or claims against prison officials who are or were directly responsible for treating his mental health care needs, I will provide him a brief period of time in which to submit an amended complaint. For example, plaintiff included two letters in an attachment to his complaint that he wrote to Dr. Elliott, the PSU director at his previous institution. In the letters, he informed Elliott that he was suffering from severe post-traumatic stress disorder, that he needed some form of treatment for his condition and that his doctor had indicated that it was "inadvisable" for him to take medication. As discussed above, if plaintiff was seeking only access to group treatment activities, this would not be sufficient to state a claim against Elliott, or anyone else. See, e.g., Snipes, 95 F.3d at 590 (prisoners do not have right to treatment that they desire but only to treatment that is not "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition.")

However, if it is the case that Dr. Elliott knew that plaintiff needed treatment and was getting none and he did not arrange for treatment of any sort, plaintiff might have a

constitutional claim against him. Likewise, if plaintiff has requested individual treatment (as opposed to group treatment) at his current institution and has been denied, this may be evidence of deliberate indifference by officials at his present institution. Therefore, I will give plaintiff a short time in which to file an amended complaint in which he states

(1) what, if anything, plaintiff told Dr. Elliott about his condition and what treatment plaintiff requested;

(2) what, if anything Elliott did in response to plaintiff's requests for treatment;

(3) who is responsible for plaintiff's mental health care needs at his present institution;

(4) what, if anything, plaintiff has told this person or persons about his post-traumatic stress disorder; and

(5) what, if any, treatment that person has recommended.

If, by May 20, plaintiff does not file an addendum, I will assume that he does not wish to proceed on any claims and will dismiss this case. Finally, I caution plaintiff again that if his only concern is that he would like group counseling and is not receiving it, this alone does not constitute a constitutional violation.

## ORDER

IT IS ORDERED that

1. Plaintiff Dennis Richardson is DENIED leave to proceed on his Eighth Amendment claim against defendant Rick Raemisch. Plaintiff's complaint is DISMISSED.

2. Plaintiff may have until May 20, 2008 to submit an amended complaint in which he names additional defendants. If plaintiff chooses to file an amended complaint, he should include in it allegations describing (1) what, if anything, plaintiff told Dr. Elliott about his condition and what treatment plaintiff requested; (2) what, if anything Elliott did in response to plaintiff's requests for treatment; (3) who is responsible for plaintiff's mental health care needs at his present institution; (4) what, if anything, plaintiff has told this person or persons about his post-traumatic stress disorder; and (5) what, if any, treatment that person has recommended. If, by May 20, 2008, plaintiff does not file an amended complaint with the court, I will assume that he does not wish to pursue any claims and I will dismiss the case.

3. Once petitioner has filed his amended complaint, I will determine whether he should be granted leave to proceed on these claims. If he is granted leave to proceed, his complaint and any addendum will be sent to the Attorney General's office in accordance

with an informal service agreement.

Entered this 6<sup>th</sup> day of May, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge