

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

CARL C. JOHNSON,

Plaintiff,

v.

SHERIFF DAVID J. MOHONEY,
CITY OF MADISON,
COUNTY OF DANE,
and DANE COUNTY SHERIFF'S DEPT.

Defendant.

ORDER

08-cv-508-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the Western District of Wisconsin receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming

jurisdiction over the case.

This is a proposed civil action for injunctive relief brought under 42 U.S.C. § 1983. Petitioner Carl Johnson is a pretrial detainee who is currently housed at the Dane County jail in Madison, Wisconsin. He requests leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. Petitioner alleges that respondents David Mahoney, City of Madison, County of Dane and Dane County Sheriff's Department violated his rights to due process under the Fourteenth Amendment. Petitioner's request will be denied and his complaint will be dismissed for failure to state a claim upon which relief may be granted.

Petitioner has made his initial partial payment in accordance with 28 U.S.C. § 1915. However, because petitioner is a prisoner, § 1915A(c)("[P]risoner' means any person incarcerated or detained in any facility who is accused of . . . violations of criminal law."), 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 ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. 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 complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

On July 21, 2008, petitioner Carl C. Johnson was arrested by the City of Madison Police Department. He was taken to the Dane County jail and placed in a temporary holding cell. While he was sleeping, he was bitten by a spider, which caused him to wake up and hit his cheek, at which time he saw a spider and killed it. By the following day, the spider bite had caused his face to swell and he was in extreme pain. Respondents have a “well-settle[d] policy, custom and/or practice of allowing pre-trial detainees to be placed in unsanitary holding cell.”

DISCUSSION

Pretrial detainees are guaranteed the same basic protections as convicted prisoners. Board v. Farnham, 394 F.3d 469, 478 (7th Cir. 2005)(citation omitted). In determining whether a pretrial detainee’s rights are violated under the Fourteenth Amendment, the Eighth Amendment’s “deliberate indifference” standard will guide the analysis. Id. Thus, the detainee must show that prison officials intentionally or in a criminally reckless manner disregarded a serious risk of harm. Washington v. LaPorte County Sheriff's Dept, 306 F.3d 515, 517 (7th Cir. 2002); Chapman v. Keltner, 241 F.3d 842, 845 (7th Cir. 2001). Prison officials must maintain cells at a “level of cleanliness and sanitation” and ensure that prisoners and detainees receive “basic human needs.” Harris v. Fleming, 839 F.2d 1232,

1235 (7th Cir. 1988).

To succeed on a claim of unsanitary conditions, petitioner would need to allege conditions evincing a serious disregard for the inmates health. The following kinds of alleged conditions have been found to rise to the level of unsanitary conditions: a cell infested for sixteen months with cockroaches that crawled over the prisoner's body, Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996); a cell in which there was mold and fiberglass in the ventilation ducts and evidence of severe nosebleeds and respiratory problems, Board v. Farnham, 394 F. 3d 469, 486 (7th Cir. 2005); or a cell in which the inmate was "forced to live with 'filth, leaking and inadequate plumbing, roaches, rodents, the constant smell of human waste, poor lighting, inadequate heating, unfit water to drink, dirty and unclean bedding, without toilet paper, rusted out toilets, broken windows, [and] . . . drinking water contain[ing] small black worms which would eventually turn into small black flies,'" Jackson v. Duckworth, 955 F. 2d 21, 22 (7th Cir. 1992). In contrast, an allegation that a prisoner who was incarcerated in the same cell for six years saw "several" cockroaches and was bitten by a cockroach twice was found insufficient to constitute a constitutional violation. Sain v. Wood, 512 F.3d 886, 894 (7th Cir. 2008).

In this case, petitioner alleges seeing and being bitten by a single spider. In addition, he asserts that defendants have a "well-settle[d] policy, custom and/or practice of allowing" unsanitary conditions without making any additional allegations to support this legal

conclusion. Although petitioner did allege an injury from his stay at the Dane County jail, an insect bite alone is not the kind of situation that rises to the level of a constitutional violation. It is unfortunate such an injury would occur, but it is accidental. By itself, it does not imply intentional disregard for petitioner's health and safety or deliberate indifference to it. Thus, petitioner's motion to proceed in forma pauperis will be denied.

ORDER

IT IS ORDERED that

1. Petitioner's request for proceeding in forma pauperis on his claim that respondents violated his Fourteenth Amendment rights by being deliberately indifferent to the unsanitary conditions in the Dane County jail will be DENIED.

2. Because I have dismissed a portion of petitioner's complaint for one of the reasons listed in 28 U.S.C. 1915(g), a strike will be recorded against him.

Entered this 24th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge