

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

SAMUEL S. UPTHEGROVE,

Petitioner,

ORDER

v.

09-cv-211-slc¹

PCS A.J. and PCT LEAH,

Respondents.

In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, petitioner Samuel S. Upthegrove alleges that respondents PCS A.J. and PCT Leah violated his Eighth Amendment rights by failing to take steps to prevent him from harming himself. Petitioner has requested leave to proceed in forma pauperis and, in an order entered April 15, 2009, Magistrate Judge Stephen L. Crocker concluded that petitioner has no means with which to pay an initial partial payment of the filing fee. Dkt. #2.

Petitioner is a prisoner confined at the Waupun Correctional Institution. Because he is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to

¹ While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order only, I am assuming jurisdiction over this case.

proceed in forma pauperis if he has had three or more lawsuits or appeals dismissed for lack of legal merit, or if his complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a respondent who by law cannot be sued for money damages. 28 U.S.C. § 1915(e). However, petitioner is also a pro se litigant, which means his complaint will be construed liberally as it is reviewed for these potential defects. Haines v. Kerner, 404 U.S. 519, 521 (1972).

I will grant petitioner's request for leave to proceed in forma pauperis on his sole Eighth Amendment claim. Viewing the facts alleged in the light most favorable to plaintiff, it is plausible to infer that petitioner was at substantial risk of causing himself serious harm and respondents A.J. and Leah knew it but failed to take reasonable preventive measures.

From petitioner's complaint, I draw the following allegations of fact.

ALLEGATIONS OF FACT

On or around February 21, 2007, petitioner Samuel S. Upthegrove, a prisoner at the Waupun Correctional Institution, covered the door window to his cell, broke his radio and broke the window in the back of the room. Respondent PCS A.J., a psychiatric care supervisor, told petitioner to uncover his window, but petitioner refused.

Respondent A.J. then ordered a room entry team to be assembled. Petitioner was restrained and taken to the hallway while respondent A.J. conducted a search of petitioner's

cell. The cell's window was broken and the room contained loose pieces of metal and glass. Respondent A.J. removed certain property from the room, but left the loose glass and metal in the room and ordered that petitioner be returned to the same room.

Shortly afterward, petitioner cut himself with a piece of glass. He told respondent PCT Leah, a psychiatric care technician, that he had cut his arm and showed her his arm, which was "covered with bleeding lacerations." He also told respondent Leah that he "couldn't take it anymore" and was "sorry." Respondent Leah simply walked away, leaving petitioner to further harm himself. Petitioner has a history of suicide attempts and mental illness of which respondents were "well aware" at the time of the incident. Nonetheless, respondents did not attempt to seek medical attention to treat petitioner's wounds or attempt to prevent petitioner from committing suicide.

OPINION

The Eighth Amendment to the United States Constitution requires the government to "provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 48 U.S. 517, 526-27). In Farmer, 511 U.S. at 825, the Supreme Court held that the Constitution requires prison officials to protect prisoners from

“substantial risk[s] of serious harm” by other prisoners, such as a physical or sexual assault. When prison officials are aware of a substantial risk of harm, even risks of self-harm such as suicide, they must take reasonable steps to prevent that harm. Borello v. Allison, 446 F.3d 742, 747 (7th Cir. 2006); Woodward v. Correctional Medical Services, 368 F.3d 917, 928 (7th Cir. 2004); Peate v. McCann, 294 F.3d 879, 882 (7th Cir. 2002); Sanville v. McCaughtry, 266 F.3d 724, 737 (7th Cir. 2001); Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 258 (7th Cir. 1996). Failure to do so constitutes deliberate indifference and violates an inmate’s Eighth Amendment rights. Cavalieri v. Shepard, 321 F.3d 616, 620-21 (7th Cir. 2003) (prison officials have duty to protect inmates from causing self-harm); Sanville, 266 F.3d at 734; see also Mombourquette v. Amundson, 469 F.Supp. 2d 624 (W.D. Wis. 2007) (failure to protect inmate from suicide constitutes deliberate indifference).

To succeed on a claim that respondents violated his rights by disregarding a substantial risk of self-harm, petitioner must prove that (1) respondents knew of a “substantial risk” that he would harm himself; and (2) respondents disregarded that risk by failing to take reasonable measure to abate it. Farmer, 511 U.S. at 844. Petitioner has alleged sufficient facts to state a claim under this standard. He alleges that, although respondents knew of his history of suicide attempts and mental illness, respondent A.J. returned him to his room containing a broken window and pieces of glass and metal even

though he had just broken things in his room and respondent Leah walked away from him after he showed her his self-inflicted injuries and told her he “couldn’t take it anymore.” If plaintiff’s allegations are true, it is plausible to infer that respondent A.J. knew of the broken glass and metal in his room and knew petitioner was agitated enough to do something rash such as attempt suicide or self-harm, but failed to take steps to prevent petitioner from harming himself. Likewise, it is plausible to infer that respondent Leah knew petitioner was suicidal and was likely to continue to self-harm, but refused to try to stop him or seek help. This is sufficient to state a claim against both respondents. Cf. Cavalieri, 321 F.3d at 621 (“prisons and jails have developed procedures for dealing with prisoners who display suicidal tendencies, such as removing items that could be used as a suicide weapon, like sheets or a sturdy telephone cord”); Frake v. City of Chicago, 210 F.3d 779, 780-81 (7th Cir. 2000) (“If it seems likely that a person is suicidal, other precautions are taken, such as placing the person in a cell which can be continuously observed and replacing the person's clothing with a paper suit.”). Therefore, petitioner will be granted leave to proceed on his claim under the Eighth Amendment against respondents A.J. and Leah.

ORDER

IT IS ORDERED that:

1. Petitioner Samuel S. Upthegrove’s request for leave to proceed in forma pauperis

is GRANTED on his claim that respondents PCS A.J. and PCT Leah violated his Eighth Amendment rights by failing to take steps to prevent him from harming himself.

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

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

4. Petitioner is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at the Waupun Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

5. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney

General for service on the state respondents.

Entered this 30th day of April, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge