

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

WILLIE JAMES SMITH JR.,

Petitioner,

v.

Sheriff DENNIS SMITH,
Administrator BARB REID,
Sgt. ORMSIN,
Officer BORGARO,
Officer GRIMS and
Sgt. JOHN DOE,

Respondents.

ORDER

09-cv-41-bbc

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner Willie James Smith Jr., who is presently confined at the Eau Claire County jail in Eau Claire, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner has paid the initial partial payment of \$2.70 as required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of

the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, because petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny him leave to proceed if he has had three or more lawsuits or appeals dismissed for lack of legal merit, or if the prisoner's complaint is legally frivolous, malicious, fails 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. After examining petitioner's complaint, I find that he fails to state a claim upon which relief may be granted in federal court.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner Willie James Smith Jr. is a prisoner currently confined at the Eau Claire County jail in Eau Claire, Wisconsin. Respondent Dennis Smith is the Dunn County Sheriff and respondent Barbara Reid is the Dunn County jail administrator. Respondents Sgt. Ormsin, Officer Borgaro, Officer Grimms and Sgt. John Doe are all employed at the Dunn County jail in Menomonie, Wisconsin.

B. Petitioner's Slip and Fall

On December 25, 2008, petitioner was transported to the Dunn County jail and on

December 26 he was placed in D-block. One of the cells on the first level of D-block had a leaky sink that caused water to leak from the cell into the walk way in the day room. Inmate Cham Omot told petitioner that it was Omot's cell that had the leaky sink and that he had told jail staff, including respondents Grimms, Borgaro, Ormsin and John Doe, a few days earlier that his sink was broken.

Around 6 p.m. on December 28, 2008, petitioner slipped and fell in the day room because of the water leaking into the day room from inmate Omot's broken sink. Petitioner landed "very hard" on the right side of body and was unable to move for a few minutes after the slip and fall. Respondent Bargaro arrived to help petitioner. Bargaro asked petitioner whether he was okay and what had happened. Petitioner responded that he was in a lot of pain and that he slipped and fell because of the water that was leaking from Omot's sink into the day room. Respondent John Doe arrived to help hold petitioner still until emergency help arrived.

Emergency workers arrived, placed petitioner in a neck brace, strapped him to a wooden board and rushed him to Red Cedar Hospital Emergency Room. At the emergency room, petitioner told the medical staff what had happened and they provided him with pain medications, x-rays and a catscan. The doctor told petitioner that the fall may result in some discomfort problems in the future.

After his fall, petitioner began having trouble sleeping. Specifically, petitioner cannot

lie on his back, stomach or right side for long periods of time without suffering pain in the right side of his entire upper body, including his right shoulder and neck.

DISCUSSION

I understand petitioner to be asserting that respondents were deliberately indifferent to petitioner's health and safety when they failed to insure that the floor in the day room on which petitioner fell was maintained properly.

To state a claim under the Eighth Amendment's cruel and unusual punishment clause that he was injured by the conditions of his confinement, a prisoner must allege facts from which it may be inferred that the condition complained of is "sufficiently serious" to implicate constitutional protection, and that prison officials acted with deliberate indifference to inmate health and safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). Negligence or even gross negligence on the part of officials is not sufficient for liability; their actions must be intentional or criminally reckless. Id. at 837.

Put simply, the condition about which petitioner complains, a wet and slippery floor in the day room, cannot be characterized as a prison condition that is sufficiently serious to require protection under the Eighth Amendment regardless what the source was of the water that caused the condition. A slippery floor is a common place for injuries to occur. It is a safety hazard to which the general public is exposed on a daily basis and amounts to

negligence at most rather than a danger of constitutional proportion. See, e.g., LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir. 1993) (holding that "slippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment"); see also Snipes v. Detella, 95 F.3d 586, 592 (7th Cir. 1996) ("an inch or two" of accumulated water in the shower not “an excessive risk to inmate health or safety” (quoting Farmer v. Brennan, 510 U.S. 825, 838 (1996))). Because negligence alone is not enough to support a claim of deliberate indifference, Daniels v. Williams, 474 U.S. 327 (1986); Farmer, 511 U.S. at 837, petitioner will be denied leave to proceed against respondents.

Although petitioner has failed to state a claim under § 1983, his failure to do so says nothing about whether he may have a negligence claim against respondents, which he could bring in state court. Thus, petitioner’s complaint will be dismissed without prejudice to his refiling his case in state court, if he so chooses.

ORDER

IT IS ORDERED that:

1. Petitioner Willie James Smith Jr.’s request for leave to proceed in forma pauperis is DENIED with respect to his Eighth Amendment claim regarding the slippery day room floor for failure to state a claim upon which relief may be granted;

2. 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 Eau Claire County jail of that institution's obligation to deduct payments until the filing fee has been paid in full;

3. Because I have dismissed one or more claims asserted in petitioner's complaint for one of the reasons listed in 28 U.S.C. § 1915(g), a strike will be recorded against petitioner;

4. The clerk of court is directed to DISMISS petitioner's case without prejudice and close this case.

Entered this 23rd day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge