

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

JAMES LUKE,

Petitioner,

v.

Correctional Officer LENZ and
Warden GREGORY GRAMS,¹

Respondents.

ORDER

09-cv-91-slc

While this court has a judicial vacancy, 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

¹Although petitioner refers to a respondent warden Gregory "Grahm," public records show that respondent's name is correctly spelled "Grams." The caption and opinion are updated to reflect this fact.

order, I am assuming jurisdiction over the case.

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner James Luke, who is presently confined at the Columbia Correctional Institution in Portage, 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 even a partial payment of the fee for filing this lawsuit, and therefore, I will screen his complaint.

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). 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 his 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. I conclude that petitioner has stated an Eighth Amendment excessive force claim against respondent Lenz. However, petitioner has failed to state a claim upon which relief may be granted against respondent Grams.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner James Luke is a prisoner incarcerated in the segregation unit of Columbia Correctional Institution in Portage, Wisconsin. Respondent Lenz is a correctional officer working on the segregation unit at the Columbia Correctional Institution. Respondent Gregory Grams is the warden at the Columbia Correctional Institution.

B. Petitioner's Altercation with Respondent Lenz

At approximately 5:30 p.m. on January 16, 2008, respondent Lenz arrived at petitioner's cell to distribute medication. Petitioner was on a "tether to door and cuff for medication" restriction. Respondent Lenz followed this restriction by tethering and cuffing petitioner to the door before he could receive his medication. Petitioner used his left hand to put his medication in his mouth, while his right hand was cuffed to the door. Lenz provided petitioner with a styrofoam cup full of water for petitioner to use to take his medication.

While petitioner was taking his medication, respondent Lenz was speaking with inmate Luis Nieves. As petitioner was trying to get Lenz's attention to inform Lenz that he was finished with the cup, inmate Nieves yelled, "Watch out! He's going to dash you," which implied that petitioner was attempting to project bodily fluids at Lenz. However, inmate Nieves was lying. Petitioner was not attempting to "dash" Lenz.

In response to Nieves's warning, Lenz spun around while swinging his arms defensively at petitioner. Lenz smashed petitioner's hands into the cell trap door and grabbed petitioner's left arm with both hands. Petitioner responded by stating to Lenz that Nieves had been lying, asking Lenz to release the hold he had on petitioner's arm and struggling to free his left arm. As petitioner pulled his arm free from Lenz's grasp, petitioner began to fall and to avoid falling he grabbed for the trap door. When petitioner grabbed a hold of the trap door, Lenz slammed the trap door on petitioner's fingers. Fearing that Lenz would chop his fingers off in the trap door, petitioner told Lenz to calm down and to release his fingers.

Petitioner believed that Lenz was not going to release the trap door, so he tried to force the trap door up himself. As petitioner attempted to release the trap door, Lenz grabbed petitioner's right arm and pulled it through the trap door. Petitioner's right arm was palm up through the trap door when Lenz brought all his weight down on petitioner's forearm causing petitioner's arm to break. The pain from his arm breaking caused petitioner to collapse unconsciously to the floor.

After the incident, petitioner was taken to Divine Savior Hospital. The medical staff determined that he should be seen by a specialist and transferred him to the University Hospitals in Madison, where he underwent a seven-hour surgery to reconstruct his broken right forearm. The doctors used 13 screws and two metal plates to reconstruct his forearm.

Since the surgery, petitioner's mobility in his right arm is limited and he suffers from pain in his right arm that often prevents him from sleeping.

DISCUSSION

I understand petitioner to be contending that his Eighth Amendment rights were violated when respondent Lenz broke petitioner's forearm. In the prison context, excessive force claims arise under the Eighth Amendment. Whitley v. Albers, 475 U.S. 312 (1986); Hudson v. McMillian, 503 U.S. 1 (1992). The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force "was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson, 503 U.S. at 6-7. To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. Whitley, 475 U.S. at 321; Outlaw v. Newkirk, 259 F. 3d 833, 837 (7th Cir. 2001). In Hudson, 503 U.S. at 9-10, the Court explained that although the extent of injury inflicted is one factor to be considered, the absence of a

significant injury did not bar a claim for excessive force so long as the officers used more than a minimal amount of force.

Petitioner alleges that in response to another inmate's false warning, respondent Lenz slammed petitioner's hands in his cell trap door, and ignored his pleas to release petitioner's hands, pulled his arm through the cell's trap door, placed all his weight on it and broke it. These allegations are enough to state a claim that respondent Lenz used more force than was necessary under the circumstances in violation of the Eighth Amendment.

However, petitioner has failed to state a claim against respondent Grams because the complaint includes no allegations allowing an inference to be drawn that Grams was personally involved in the excessive force incident. It is well established that liability under § 1983 must be based on a respondent's personal involvement in the constitutional violation. E.g., Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994). "A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary." Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). None of the allegations in the complaint support an inference that respondent Grams was involved in the excessive force incident in any way. Therefore, petitioner may not proceed on his excessive force claim against respondent Grams.

ORDER

IT IS ORDERED that:

1. Petitioner James Luke's request for leave to proceed in forma pauperis is DENIED with respect to his claim that respondent Gregory Grams violated petitioner's Eighth Amendment rights for failure to state a claim upon which relief may be granted; respondent Grams is DISMISSED from this lawsuit;

2. Petitioner James Luke's request for leave to proceed in forma pauperis is GRANTED with respect to his claim that respondent Lenz's use of excessive force violated petitioner's Eighth Amendment rights;

3. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner learns the name of the lawyer that will be representing the respondent, he should serve the lawyer directly rather than respondent. The court will disregard documents petitioner submits that do not show on the court's copy that petitioner has sent a copy to respondent or to respondent's attorney.

4. Petitioner should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. 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

Columbia Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

6. 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 respondent.

7. 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.

Entered this 24th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge