IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RANDALL ARTHUR RADUNZ,

Plaintiff,

v.

EVERETT MUHLHAUSEN,
MICHAEL KNOLL, JERRY NELSON
and BRUCE VON HADEN,

Defendants.

ORDER

09-cv-217-slc[1]

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Plaintiff Randall Arthur Radunz has filed a second amended complaint as directed by the court. I rejected plaintiff's first two complaints because they failed to state a claim upon which relief may be granted. In his first complaint, plaintiff alleged only that "the Defendants" violated his rights under the Fourteenth Amendment by "causing Plaintiff to be detained at the Pierce County Jail without due process of law" and under the Eighth

[1] Because consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action, I am assuming jurisdiction over the case for the purpose of this order.

Amendment by "causing Plaintiff to be subjected to improper medical care." Among other things, I directed plaintiff to file an amended complaint that identified "[w]hat . . . each defendant [did] that makes him liable for violating plaintiff's rights." Dkt. #5.

Plaintiff's first amended complaint added a few more facts, but he still failed to explain how any of the defendants was involved in violating his rights. With respect to his claim of unlawful detention, he alleged only that he asked defendant Jerry Nelson to release him and that defendant Everett Muhlhousen (the sheriff) and defendant Michael Knoll (the jail administrator) are "ultimately responsible" for the detention and release of prisoners. With respect to his medical care claim, he alleged only that he fell unconscious in front of defendant Nelson and was taken to the hospital as a result. He did not allege that any of the defendants failed to provide him with any care that he needed.

In an order dated June 5, dkt. #7, I explained why these allegations were insufficient:

> [A] jailer may be held liable for unlawfully detaining a prisoner only if the jailer *knows* that there is a substantial risk that the prisoner's detention is unlawful. Armstrong, 152 F.3d at 577. With respect to defendants Muhlhousen and Knoll, plaintiff alleges only that they are "responsible" for the proper release of prisoners. However, high ranking officers may not be held liable under the Constitution simply as a result of their rank. Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise.")
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> With respect to defendant Nelson, plaintiff alleges that he told Nelson he wanted to be released, but that is not enough. Jailers are not required to credit a prisoner's unsubstantiated claims seeking release. Hernandez v. Sheahan, 455 F.3d 772, 777 (7th Cir. 2006) (upholding sheriff's policy of refusing to investigate claims

> of innocence after probable cause determination). Rather, plaintiff must plead facts that are plausible on their face showing that defendants were actually aware that he was being held for an unreasonably long time. If plaintiff simply asked for release without explaining why his detention was illegal, defendants would not necessarily be required to investigate further.

I instructed plaintiff to file a second amended complaint that included "facts showing what each defendant knew about the legality of plaintiff's detention" and "the facts that each defendant knew about his condition," among other things. Dkt. #7.

Plaintiff's second amended complaint is longer and includes several attachments, but it does not include facts showing defendants' personal involvement in violating plaintiff's rights. The only allegation plaintiff includes about defendants is that they had "a duty to oversee" lower ranking employees, but this would be a relevant allegation only if defendants could be held liable for the acts of the employees they supervise. In cases like Burks, 555 F.3d at 593-94, the court of appeals has concluded that they cannot. See also Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) ("[E]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct.")

I have given plaintiff three chances to allege facts showing that defendants knew that he was being held unlawfully and that he was not receiving needed medical care. He is not entitled to another chance. Airborne Beepers & Video, Inc. v. AT & T Mobility LLC, 499 F.3d 663, 666-67 (7th Cir. 2007) ("[T]he district court spelled out for [the plaintiff] what deficiencies in the complaint needed to be remedied. [The plaintiff's] failure to fix those

shortcomings provides ample grounds for dismissal.") Because plaintiff has failed to allege facts that state a claim upon which relief may be granted, I must dismiss his case.

ORDER

IT IS ORDERED that

1. This case is DISMISSED for plaintiff Randall Arthur Radunz's failure to state a claim upon which relief may be granted.

2. A strike will be recorded under 28 U.S.C. § 1915(g).

3. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

4. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 8th day of July, 2009.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge