

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

OSCAR HALL ELLIOTT,

Plaintiff,

v.

SERGEANT PRICE,

Defendant.

ORDER

09-cv-596-bbc

In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Oscar Hall Elliott contends that defendant Sergeant Price violated his constitutional rights by refusing to move him out of segregation. On October 16, 2009, I dismissed plaintiff's complaint because it violated Fed. R. Civ. P. 8. Plaintiff submitted a proposed amended complaint on November 2, 2009. However, I dismissed the proposed amended complaint because it too violated Rule 8 and I gave plaintiff one more opportunity to submit a complaint that provides proper notice. Now before the court is plaintiff's second proposed amended complaint.

Because plaintiff is a prisoner seeking redress against a governmental officer, I am required by the 1996 Prison Litigation Reform Act to screen his amended complaint and

dismiss any portion that 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. 28 U.S.C. § 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). After reviewing the proposed complaint, I conclude that plaintiff has failed to state a claim against defendant. Therefore, his complaint must be dismissed.

In his second amended complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

At times relevant to this case, plaintiff Oscar Hall Elliott was an inmate at the Dane County jail in Madison, Wisconsin. He has been diagnosed with bipolar schizophrenia disorder. Defendant Sergeant Price, a building sergeant at the Dane County jail, was aware of plaintiff's bipolar disorder. At the county jail, plaintiff was housed with inmates who did not have the same special needs that he has. The other inmates made him feel uncomfortable and poked fun at him. After plaintiff told the deputies at the jail about the situation, he was moved to segregation.

Plaintiff remained in segregation for approximately four and a half months. He did not receive medication while he was in segregation. He was told that "they were working on it."

Eventually, plaintiff decided that he wanted to be moved out of segregation because he was “tired of depriving [him]self of the privileges that were afforded to other inmates,” including Alcoholics Anonymous meetings, longer phone calls, television and more religious services. Plaintiff asked defendant to move him from segregation to special needs housing, but defendant refused to move him. Also, on several occasions plaintiff asked mental health staff to move him from segregation so that he could enjoy the same privileges as other inmates. The staff told plaintiff that according to defendant’s orders, he could not be moved. Defendant had no disciplinary reason to keep plaintiff in segregation.

DISCUSSION

After reviewing plaintiff’s previous complaints, I determined that plaintiff was raising three possible constitutional claims against defendant: (1) defendant failed to protect plaintiff from a substantial risk of serious harm at the hands of other inmates in violation of the Eighth Amendment; (2) defendant violated his right to procedural due process under the Fourteenth Amendment by keeping him in segregation without justification or a hearing; and (3) defendant failed to provide adequate medical care for plaintiff’s bipolar disorder in violation of the Eighth Amendment. However, I told plaintiff that if he wished to proceed on any of these claims, he needed to provide more information in his complaint. Unfortunately for plaintiff, the factual allegations in his second proposed amended

complaint are insufficient to state a claim against defendant.

In particular, to state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a “substantial risk of serious harm” and (2) the prison officials identified acted with “deliberate indifference” to that risk. Farmer v. Brennan, 511 U.S. 825, 834 (1994); Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005). Plaintiff alleges only that other prisoners were “poking fun” at him. Teasing alone does not rise to the level of a serious risk of harm.

To state a procedural due process claim, a prisoner must allege facts suggesting that he was deprived of a “liberty interest” and that this deprivation took place without the procedural safeguards necessary to satisfy due process. Sandin v. Conner, 515 U.S. 472, 483-84 (1995). The Supreme Court has explained that liberty interests “will be generally limited to freedom from restraint which . . . imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Id. A period of segregated confinement may be “atypical and significant” “if the length of segregated confinement is substantial and the record reveals that the conditions of confinement are unusually harsh.” Marion v. Columbia Correction Institution, 559 F.3d 693, 697-98 (7th Cir. 2009) (holding that a prisoner’s confinement in segregation for 240 days may implicate a liberty interest).

Plaintiff has alleged no facts to suggest that the conditions of his confinement were unusually harsh; in fact, his own allegations suggest that he was placed in confinement either

at his own request or for administrative or protective purposes. He does not suggest that defendant kept him in segregation to punish him. The Court of Appeals for the Seventh Circuit has explained “that inmates have no liberty interest in avoiding transfer to discretionary segregation—that is, segregation imposed for administrative, protective, or investigative purposes.” Townsend v. Fuchs, 522 F.3d 765, 771 (7th Cir. 2008).

Finally, to state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. Estelle, 429 U.S. 97, 104 (1976); Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). I can assume that plaintiff’s bipolar schizophrenia qualifies as a serious medical need that requires medication or other treatment. However, plaintiff does not allege facts to support an inference that defendant was deliberately indifferent to his serious medical need.

“Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). Plaintiff alleges that defendant was aware of his diagnosis of bipolar disorder. However, plaintiff does not suggest that defendant was involved in his mental health treatment. He does not allege that defendant was responsible for denying plaintiff medication or even that defendant was aware that plaintiff was not receiving medication. He does not allege that medication was withheld because he was in

segregation or that moving out of segregation would allow him to receive medication or other treatment. Instead, he states that he wanted to move out of segregation so that he could enjoy privileges such as longer phone calls and group meetings. In sum, plaintiff has failed to state a claim that defendant was deliberately indifferent to his medical needs.

Because plaintiff has now failed three times to properly state a claim in this lawsuit, I will dismiss his complaint with prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Oscar Hall Elliott is DENIED leave to proceed on his claims against defendant Sergeant Price and his complaint is DISMISSED with prejudice for plaintiff's failure to state a claim on which relief may be granted.

2. A strike will be recorded against plaintiff pursuant to § 1915(g) because one or more of his claims has been dismissed for failure to state a claim upon which relief may be granted.

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

4. The clerk of court is directed to close this case.

Entered this 4th day of January, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge