

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

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DAVID MARSHALL, JR.,

Plaintiff,

v.

PAUL WESTERHAUS, BRUCE SUNDE  
and TERRY TIMM,

Defendants.  
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ORDER

10-cv-513-bbc

In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff David Marshall, Jr. contends that defendants Paul Westerhaus, Bruce Sunde and Terry Timm violated his rights under the Eighth Amendment by subjecting him to harsh conditions of confinement. This case was severed from case number 10-cv-357-bbc. In that case, I granted plaintiff's motion to proceed under the in forma pauperis statute, 28 U.S.C. § 1915, and determined that plaintiff had no means to make an initial partial payment. Plaintiff may proceed in forma pauperis without making an initial partial payment in this case as well, but should be aware that he is obligated to pay the \$350 filing when he has the means to do so. His prison trust fund account will be monitored and the fee will be taken

in monthly installments when the funds exist.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his 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 complaint, I conclude that plaintiff may proceed on his claim that defendants Westerhaus, Sunde and Timm violated his right to be free from cruel and unusual punishment under the Eighth Amendment by subjecting him to unconstitutional conditions of confinement.

In his complaint, plaintiff alleges the following facts relevant to the claims in this lawsuit.

#### ALLEGATIONS OF FACT

Plaintiff David Marshall, Jr. is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. At all times relevant to this complaint, plaintiff was confined at the Lincoln Hills School for Juveniles in Irma, Wisconsin. Defendant Paul Westerhaus was the superintendent of the Lincoln Hills School, defendant Bruce Sunde was the security director and defendant Terry Timm was the unit manager of the Krueger cottage at Lincoln Hills.

At Lincoln Hills School, plaintiff was confined for long periods in the maximum security segregation unit where he was given only a “threadbare” mattress with no sheets or pillows. In segregation, plaintiff did not have access to shoes or any hygiene products, including tissue, toothpaste, a toothbrush, a washcloth, a dry towel or hot water. He was forbidden from possessing writing materials, photos or mail and was allowed outside of his cell for only one hour of “recreation” each day. The “recreation” consisted of plaintiff being cuffed, shackled and required to sit at a picnic table without moving or speaking to anyone. Plaintiff filed grievances about the conditions in segregation to defendants Westerhaus, Sunde and Timm, but his grievances were either destroyed or ignored. The conditions in segregation often “drove [plaintiff] to the point of insanity” and caused him to engage in self-harm and have suicidal thoughts.

## DISCUSSION

Plaintiff contends that defendants Westerhaus, Sunde and Timm violated his rights under the Eighth Amendment by maintaining conditions in segregation that deprived him of basic necessities and fell below contemporary standards of decency. In addition, plaintiff alleges that defendants ignored his complaints regarding the harsh conditions. 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). To demonstrate that

prison conditions violated the Eighth Amendment, a plaintiff must allege that prison conditions were sufficiently serious so that they denied him “the minimal civilized measure of life’s necessities,” Farmer v. Brennan, 511 U.S. 825, 834 (1994), or “exceeded contemporary bounds of decency of a mature, civilized society.” Lunsford v. Bennet, 17 F.3d 1574, 1579 (7th Cir. 1994). This means that the conditions of the cell must create a substantial risk of serious harm, Farmer, 511 U.S. at 847, or at the very least, the conditions must deprive plaintiff of some “identifiable human need such as food, warmth, or exercise,” Wilson v. Seiter, 501 U.S. 294, 304 (1991).

In addition, the plaintiff must allege that the defendants acted with deliberate indifference to a risk of serious harm to plaintiff. Lunsford, 17 F.3d at 1579. “Deliberate indifference” means that the defendant knew that the plaintiff faced a substantial risk of serious harm and yet disregarded that risk by failing to take reasonable measures to address it. Farmer, 511 U.S. at 847.

Plaintiff’s allegations are sufficient to state a claim against defendants Westerhaus, Sunde and Timm arising out of his unconstitutional conditions of confinement. Depending on the exact circumstances, living in a cell with a threadbare mattress, no sheets, pillow, shoes, hygiene products or recreation opportunities may subject a prisoner to an unnecessary infliction of pain and deprive the prisoner of a human need such as warmth or exercise. In addition, plaintiff alleges that he complained to all three defendants about the harsh

conditions in segregation but they did nothing to remedy the problems. At this stage, I can infer that these three defendants were responsible for the conditions in segregation and had the ability to change the conditions. Ultimately, plaintiff will have to prove that each defendant should be held personally responsible for the allegedly unconstitutional conditions of plaintiff's confinement in segregation.

## ORDER

IT IS ORDERED that

1. Plaintiff David Marshall is GRANTED leave to proceed on his claim that defendants Paul Westerhouse, Bruce Sunde and Terry Timm violated his rights under the Eighth Amendment by subjecting him to harsh conditions of confinement.

2. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint for the defendants on whose behalf it accepts service.

3. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will

be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

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

Entered this 22d day of September, 2010.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge