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

DEREK M. WILLIAMS,

Plaintiff,

v.

RICK RAEMISCH, WILLIAM POLLARD, PETER ERICKSEN, WILLIAM SWIEKATOWSKI, THOMAS CAMPBELL, ROBIN LINDMEIER, PETER GAVIN, MICHAEL SCHULTZ and CHRISTOPHER STEVENS,

Defendants.

OPINION AND ORDER

11-cv-411-slc

Plaintiff Derek M. Williams, an inmate at the Green Bay Correctional Institution, brings this civil complaint under 42 U.S.C. § 1983, in which he raises retaliation, due process and Eighth Amendment claims against various prison and Department of Corrections' officials. In an order entered December 8, 2011, this court granted plaintiff leave to proceed on his claim that defendants retaliated against him by filing false conduct reports and subjecting him to draconian conditions of confinement in retaliation for his having filed lawsuits against Pollard, Raemisch and Campbell. Presently before the court is plaintiff's motion for a preliminary injunction, dkt. 3, in which he asks the court to order defendants to stop retaliating against him, release plaintiff from segregation and transfer him to another institution.

With respect to his motion for a preliminary injunction, plaintiff must show that he has some chance of success on the merits of his claims and that the balance of harms favors immediate relief. *Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 473 (7th Cir. 1998). Because plaintiff has failed to meet that standard, I must deny his motion for a preliminary injunction.

For the sole purpose of deciding the motion for preliminary injunction, I find from the parties' submissions that the following facts are material and undisputed:

FACTS

I. The Parties

Plaintiff Derek Williams is an inmate who has been incarcerated at GBCI at all times relevant to this action. He has been diagnosed as having a dysthymic disorder, cocaine dependence and antisocial personality disorder.

Defendant Peter Ericksen is employed by the Department of Corrections as the Security Director at GBCI. Defendants William Swiekatowski, Thomas Campbell, Peter Ericksen, Robin Lindmeier, Peter Gavin, and Christopher Stevens are lieutenants and defendant Michael Schultz is a captain at the institution. Defendant Rick Raemisch is the secretary of the Department of Corrections. Defendant William Pollard was the warden at GBCI at the times relevant to Williams's claims, but he is now the warden at the Waupun Correctional Institution.

On October 23, 2009, and November 30, 2009, plaintiff was granted leave to proceed in this district on federal lawsuits against defendants Pollard, Raemisch and Campbell. *See Williams v. Pollard, et al.*, 09cv-641-wmc, and *Williams v. Pollard, et al.*, 09-cv-485-wmc.

On February 5, 2010, plaintiff was selected randomly to provide a urine sample to be tested for the use of illegal drugs. (Plaintiff asserts that GBCI also orders UA testing for "cause," but he has no proof that his UA draw was for cause and not random.) The test results were negative.

On March 11, 2010, plaintiff was placed on temporary lock up status for an investigation of the introduction of contraband into the institution. Defendant Ericksen approved this placement on March 12, 2010.

On March 16, 2010, Swiekatowski said to plaintiff, "When you challenge the administration bad things happen."

On March 24, 2010, defendant Swiekatowski issued Conduct Report No. 2180862 to plaintiff for a violation of Wis. Admin. Code DOC § 303.32 (Enterprise and Fraud). The charges were based upon a letter that plaintiff denies he wrote and which another inmate claims to have authored. On March 30, 2010, plaintiff had a full due process hearing before defendant Campbell, after which he was found guilty. Plaintiff appealed the finding to Pollard, who affirmed the decision. Plaintiff also filed a grievance concerning the conduct report and disciplinary hearing, which was dismissed by defendant Pollard. The dismissal of the grievance was upheld by Raemisch.

On May 21, 2010, plaintiff was served with Conduct Report No. 2180886 for possession of intoxicants (drugs). The report was signed by defendant Lindmeier and was based on statements from confidential informants and on monitored telephone conversations between plaintiff and Karen Banek. No drugs were ever found. On June 8, 2010, a disciplinary hearing was held on this conduct report in front of defendant Gavin. Although plaintiff asked to have the telephone recordings present at the hearing, they were not. Gavin found plaintiff guilty of the charge. Plaintiff appealed the decision to Pollard, who affirmed Gavin's decision. Plaintiff also filed a grievance concerning this conduct report, which was dismissed by Pollard. Defendant Raemisch affirmed the dismissal.

On August 19, 2010, defendant Stevens issued Conduct Report No. 2154007 to plaintiff for a violation of Wis. Admin. Code DOC § 303.27(1) (Lying About Staff). On November 11, 2010, plaintiff had a full due process hearing conducted by defendant Shultz. Schultz found him guilty. Plaintiff appealed the decision and it was affirmed by Pollard. Plaintiff also filed a grievance, which was dismissed by Pollard. Pollard's decision was upheld by Raemisch.

Plaintiff was placed in segregation from March 14, 2010 to June 2011. On March 21, 2011, plaintiff was placed in observation after threatening to harm himself. Around this time, Ericksen said to plaintiff: "I'll send you to Boscobel or keep you housed here and we can do this for the next 10 years." Plaintiff remained on observation status until May 2011.

Plaintiff filed his complaint in this case in June 2011. According to plaintiff, the harsh conditions in segregation caused him to commit self harm and attempt suicide.

Williams's placement at GBCI has ping-ponged between general population and segregation. He has been in general population most of the time between July 26, 2011 and November 30, 2011. He recently was moved back to segregation because of alleged threats and possession of weapons, namely, breaking apart a razor. According to plaintiff, he is "back in segregation after he panicked from a cell search believing the retaliation was back in full swing." Dec. of Derek Williams, dkt. 32, ¶13.

In October 2011, the Program Review Committee recommended continued placement of Williams at GBCI, noting that plaintiff had received two major conduct reports and one minor since his last review in October 2010.

OPINION

"[T]he granting of a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Roland Machinery Co. v. Dresser Industries*, 749 F.2d 380, 389 (7th Cir. 1984). A plaintiff asking for emergency or preliminary injunctive relief is required to make a showing with admissible evidence that (1) he has no adequate remedy at law and will suffer irreparable harm if the injunction is not granted; (2) the

irreparable harm he would suffer outweighs the irreparable harm defendants would suffer from an injunction; (3) he has some likelihood of success on the merits; and (4) the injunction would not frustrate the public interest. *See Palmer v. City of Chicago*, 755 F.2d 560, 576 (7th Cir. 1985). For preliminary relief to be granted, the irreparable harm must be likely, that is, there must be more than a "mere possibility" that the harm will come to pass. *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 788 (7th Cir. 2011) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21–23 (2008)). Although the alleged harm need not be occurring or be certain to occur before a court may grant relief, there still must be a "presently existing actual threat" of harm. *Id*. (citations omitted).

At the threshold, plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, then the court balances the relative harms and the public interest, considering all four factors on a "sliding scale." *See In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1300 (7th Cir. 1997).

When dealing with prisoner cases, federal courts must accord wide-ranging deference to correctional professionals in the adoption and execution of policies for the operation of penal institutions. *Whitley v. Albers*, 475 U.S. 312, 321–22 (1986) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)). Federal courts do not interfere with matters of prison management, such as which facility a particular prisoner is housed, without a showing that a particular situation violates the Constitution. *Mendoza v. Miller*, 779 F.2d 1287, 1292 (7th Cir.), *cert. denied*, 476 U.S. 1142 (1986).

I. Release From Segregation

In his motion for preliminary injunction, plaintiff asked this court to order his release from segregation. In the time since the injunction was filed, however, plaintiff served his term of adjustment confinement for the disciplinary actions that he claims were filed against him in retaliation and was released from segregation. Although plaintiff later was placed back into segregation for new conduct violations, he does not allege that his return to segregation was caused by any of the defendants or was part of the alleged campaign of retaliation that lies at the heart of this lawsuit. Accordingly, it appears this request is moot, at least insofar as it relates to his retaliation claim.

I note that plaintiff was allowed to proceed separately on his claim that the conditions of confinement in the segregation unit at GBCI are so harsh as to deprive him of the minimal civilized measure of life's necessities. However, plaintiff has failed to come forth with specific evidence showing any chance of succeeding on the merits of this claim. Plaintiff offers a host of conclusory allegations concerning noise levels, temperatures and lack of recreation in the segregation unit, but nothing specific enough from which this court could conclude that defendants are acting with deliberate indifference to his health and safety. Prison conditions may be harsh and uncomfortable without violating the Eighth Amendment's prohibition against cruel and unusual punishment. *Farmer v. Brennan*, 511 U.S. 825, 833-834, (1994).

Finally, plaintiff alleges that his mental health has deteriorated because of his placement in segregation. He points out that he has committed acts of self-harm and threatened to kill himself. However, his own evidence shows that institution staff have responded to plaintiff's claims regarding his mental health by scheduling him to see a psychologist and referring him for

an evaluation at the Wisconsin Resource Center. *See* Aff. of Derek Williams, dkt. 32, exh. 7. In light of plaintiff's failure to introduce any evidence suggesting that any of the defendants named in this suit are being deliberate indifferent to his mental health needs, I am unable to find that he has any chance of success on the merits or that irreparable harm will result if an injunction is not issued.

II. Transfer to Another Institution

Next, plaintiff asks to be transferred to another institution so he can be "free of any further retaliation" and to "stabilize" his mental health. Although plaintiff initially asked to be transferred to the Wisconsin Resource Center or Waupun Correctional Institution, now it appears that he is willing to be transferred *anywhere*, even another maximum security institution. Plt.'s Response Brief, dkt. 30, at 2.

But plaintiff has failed to adduce evidence showing that he will suffer irreparable harm if he remains confined at GBCI. As just discussed, the evidence of record shows that plaintiff's mental health needs are being monitored by the appropriate professionals at the institution. As for his assertion that he needs a transfer in order to be free from further retaliation, the "mere possibility" that harm may result is insufficient to establish a substantial risk of harm that would support a preliminary injunction. *Lambert v. Buss*, 498 F.3d 446, 452 (7th Cir. 2007). Plaintiff relies upon defendants' alleged pattern of past retaliatory acts, but he does not point to any evidence suggesting that defendants are engaging in such conduct now or that they are likely to do so in the future. Swiekatowski's remark to the effect that "bad things happen" to people who challenge the administration and Erickson's remark to the effect that "we can do this for the next

10 years" are far too vague to permit an inference of a "presently existing actual threat" of additional retaliation. Further, to the extent that defendants might actually retaliate against plaintiff in the future, plaintiff has failed to show that he has no adequate remedy at law. *See Campbell v. Miller*, 373 F.3d 834, 835 (7th Cir. 2004) (damages are normal and adequate response to constitutional tort such as improper search or seizure). Accordingly, plaintiff's request for transfer to another institution must be denied.

III. Cease Retaliation

Finally, plaintiff asks for an order directing defendants to "stop retaliating" against him. However, prison officials already are prohibited by the Constitution from retaliating against prisoners for exercising their right of access to the courts. There is no need to issue an injunction that does no more than order a party to do what the law already requires them to do.

ORDER

IT IS ORDERED that plaintiff Derek Williams's motion for a preliminary injunction, dkt. 3, is DENIED.

Entered this 16th day of March, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge