

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

JESSIE WILLIAMS,

Plaintiff,

v.

JOSEPH BEAHM and
C.O. STANIEC,

Defendants.

ORDER

11-cv-436-bbc

In this proposed civil action for monetary relief, plaintiff Jessie Williams contends that defendants Joseph Beahm and C.O. Staniec violated his rights under the Eighth Amendment by using excessive force against him on various occasions. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915. In a previous order, I concluded that plaintiff is unable to prepay even a partial payment of the fee for filing this lawsuit.

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 claims that defendants used excessive physical force against him in violation of the Eighth Amendment on January 4, 2007 and June 24, 2009. Plaintiff may not proceed on his claim that defendant Staniec used excessive physical force on him by throwing a milk carton at him.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Jessie Williams is an inmate at the Waupun Correctional Institution, where defendants C.O. Staniec and Joseph Beahm are correctional officers. On January 1, 2007, while defendants Staniec and Beahm were escorting plaintiff from the showers, defendant Staniec grabbed plaintiff's chin and head. Then, defendant Beahm grabbed plaintiff's shoulders and defendant Staniec hit plaintiff in the mouth, causing him to bleed. Plaintiff was not being disruptive or resisting defendants.

On May 2, 2007, defendant Staniec was passing out milk to the inmates. When he reached plaintiff's cell, he gave plaintiff "an angry look," threw the milk at plaintiff and walked away.

On June 24, 2009, while defendant Beahm and C.O. Nickel were escorting plaintiff to his cell, defendant Beahm handcuffed plaintiff to a cell door, told plaintiff he did not like him and slammed plaintiff's head into the door.

DISCUSSION

I understand plaintiff to be raising claims under the Eighth Amendment against defendants Beahm and Staniec for using excessive force against him. To state a claim of excessive force against a prison official, a plaintiff must allege that the official applied force "maliciously and sadistically for the very purpose of causing harm," rather than "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The factors relevant to this determination include such matters as why force was needed, how much force was used, the extent of the injury inflicted, whether defendant perceived a threat to the safety of staff and prisoners and whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321.

Plaintiff alleges that on one occasion, defendant Beahm held plaintiff while defendant Staniec hit him in the mouth, even though plaintiff was not being disruptive or resisting defendants. On another occasion, defendant Beahm slammed plaintiff's head into a cell door for no apparent reason. If plaintiff's allegations are true, he may be able to prove that

these defendants applied force for the sole purpose of harming him. Accordingly, I will allow plaintiff to proceed on his claims that defendants Beahm and Staniec used excessive physical force against him in violation of the Eighth Amendment on January 4, 2007 and June 24, 2009. However, plaintiff may not proceed on his claim that defendant Staniec violated his rights by giving him an angry look and throwing a box of milk at him. Nothing about these allegations suggest that Staniec applied any significant force “maliciously and sadistically for the very purpose of causing harm.”

ORDER

IT IS ORDERED that

1. Plaintiff Jessie Williams is GRANTED leave to proceed on the following claims:
 - a. Defendants Beahm and Staniec used excessive physical force against him in violation of the Eighth Amendment on January 4, 2007; and
 - b. Defendant Beahm used excessive physical force against him on June 24, 2009.
2. Plaintiff is DENIED leave to proceed on his claim that defendant Staniec used excessive force against him by throwing a milk carton at him.
3. 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 if it accepts service on behalf of the state defendants.

4. For the time being, 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 27th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge