

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

DARRIN A. GRUENBERG,

Plaintiff,

v.

C/O KINGSLAND, and
C/O JOHN DOE,

Defendants.

ORDER

11-cv-574-slc

In this prisoner civil rights lawsuit brought under 42 U.S.C. § 1983, plaintiff Darrin A. Gruenberg alleges that correctional officers at the Columbia Correctional Institution assaulted him without provocation, in violation of the Eighth Amendment. The court has received plaintiff's initial partial payment of the filing fee, as required by 28 U.S.C. § 1915(b)(1), so the complaint is ready for screening under 28 U.S.C. §§ 1915(e)(2) and 1915A. Having reviewed the complaint I conclude that it states a claim upon which relief may be granted under the Eighth Amendment.

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). In his complaint,

plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Darrin A. Gruenberg is an inmate at the Columbia Correctional Institution, where defendants Kingsland and John Doe are employed as correctional officers. On September 30, 2007, defendants escorted plaintiff from the law library to his housing cell. Because plaintiff had been involved in previous incidents, he was subject to a restriction that required leg restraints and a two-man escort for any movement. When the escort reached plaintiff's cell, plaintiff stood in the doorway facing into his cell as one of the defendants attached a tether restraint from the cell door to plaintiff's left wrist preparatory to removing plaintiff's leg restraints. Plaintiff noticed that his hard plastic items and his shower sandals were missing, so he asked Kingsland why the items had been confiscated. Kingsland responded that he did not know. (Plaintiff learned subsequently that the items were confiscated because he was banging on the hollow sink with his plastic hairbrush and his neighbor was doing the same with his shower sandals.)

Kingsland ordered plaintiff to get on his knees to make it easier to remove the leg restraints. Plaintiff ignored the order and continued questioning Kingsland about the missing property. Kingsland repeated the order and plaintiff again did not obey. Plaintiff then turned his body around to address Kingsland, who was standing one and one-half feet

behind him. Defendants responded by “decentralizing” plaintiff, which plaintiff alleges entailed “brutally attack[ing]” him and forcing him onto the ground. (“Decentralized” is the term used by Kingsland in the subsequent conduct report. According to plaintiff’s allegations, Kingsland asserted in the report that plaintiff yelled, “I ain’t going any fucking where” as he turned and lunged at Kingsland. Plaintiff denies these assertions but admits that he did not attend the hearing to challenge the report.) John Doe purposefully struck plaintiff in the face with his knee, which resulted in a laceration to plaintiff’s left nostril that caused significant bleeding. Plaintiff’s left wrist was also injured and his glasses were destroyed.

At the time of the incident, plaintiff was wearing leg restraints, wrist restraints secured to his waistbelt, and his left wrist was secured to the cell door. Plaintiff alleges that both defendants knew he was effectively secured and posed no threat. Even if they believed that he lunged at them in a threatening manner, he says that they could have disengaged because the restraints limited his mobility. Plaintiff alleges that defendants assaulted him because he yells incessantly, insults inmates and correctional officers and is generally a “crank” and a “pain in the ass” for officers in the segregation unit.

OPINION

Plaintiff’s allegations that correctional officials assaulted him are governed by the

standard for excessive force set forth in Whitley v. Albers, 475 U.S. 312, 320 (1986), which is “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” The factors relevant to making this determination include:

- the need for the application of force
- the relationship between the need and the amount of force that was used
- the extent of injury inflicted
- the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them
- any efforts made to temper the severity of a forceful response

Id. at 321. In Hudson v. McMillan, 503 U.S. 1, 9-10 (1992), the Court refined this standard, explaining that the extent of injury inflicted was one factor to be considered, but the absence of a significant injury did not bar a claim for excessive force so long as the officers used more than a minimal amount of force.

In this case, plaintiff alleges that defendants Kingsland and John Doe attacked him without provocation and threw him to the ground and that Doe kned him in the face. Although he admits disobeying orders, he argues that he exhibited no more than “peaceful obstinance” and that the defendants knew he posed no real threat to the officers or other inmates. Plaintiff says that the attack caused a laceration on his nose that left a faint scar

and injuries to his wrist and his chest. These allegations are sufficient to state a claim for excessive force in violation of the Eighth Amendment against Kingsland and John Doe. Plaintiff's claim against officer John Doe will be permitted to proceed to discovery to allow plaintiff the opportunity to discover the identity of the officer and file a motion to amend the complaint accordingly. Duncan v. Duckworth, 644 F.2d 653, 656 (7th Cir. 1981) ("[W]here a plaintiff is initially unable to name any of the persons whom he alleges to have injured him, and therefore uses fictitious names to refer to them in his complaint, . . . the district court should order their disclosure or permit the plaintiff to obtain their identity through discovery.") (citations omitted). Early on in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed defendant and will set a deadline within which plaintiff is to amend his complaint to include the unnamed defendant.

ORDER

IT IS ORDERED that

1. Plaintiff Darrin A. Gruenberg is GRANTED leave to proceed on his claim that defendants Kingsland and John Doe violated his right to be free from cruel and unusual punishment under the Eighth Amendment by engaging in excessive force.

2. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Pursuant to 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 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 for defendants.

5. 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). 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 fee has been paid in full.

Entered this 8th day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge