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

BOBBY LEE COIL,

Plaintiff,

v.

WARDEN TIM HAINES, J. SWEENEY, CAPTAIN BOISEN, LIEUTENANT BROWN, SERGEANT KUSSMAUL, LIEUTENANT DAVE ESSER, SERGEANT BRINKMAN, SERGEANT STEWART, C/O MORIS, C/O RILEY, DR. STACEY HOEM, DR. SHANA L. BECKER, DR. ANDERSON, JANI S. SHARPE, and JOHN DOES 1-5,

Defendants.

OPINION AND ORDER

12-cv-69-wmc

Plaintiff Bobby Lee Coil brings this action under 42 U.S.C. § 1983 against various staff and administrators at the Wisconsin Secure Program Facility ("WSPF"). Coil is an inmate at WSPF, and asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Coil has provided, the court has concluded that he is unable to prepay any part of the fee for filing this lawsuit. The court must now determine whether Coil's proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

Coil claims that defendants violated his Eighth Amendment rights on two occasions. First, he claims to have been was assaulted by prison guards and subjected to excessive force. Second, he claims to have been kept in an observation cell without adequate clothing or access to personal hygiene while various doctors and guards

exhibited deliberate indifference to his situation. After examining the complaint, the court concludes that Coil may proceed on both claims.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Coil alleges, and the court assumes for purposes of this screening order, the following facts.

A. Assault

On November 23, 2011, Bobby Lee Coil was being escorted to his cell on the Alpha Unit when Sergeant Kussmaul began to verbally abuse him and threatened to shove him into a wall. Kussmaul and Correctional Officer Moris then tightened their grip on Coil's arms, causing his handcuffs to cut into his wrists. After Coil complained about the handcuffs, Kussmaul became "very aggressive." Moris and Kussmaul continued to twist and bend his writs around the cuffs, causing swelling and aching in Coil's arms.

Fearing further harm, Coil tried to shake loose from Moris. The two guards called for assistance, and Correctional Officer Kiley and Captain Boisen appeared. Kiley and Moris said: "We're going to break your arm, Asshole." Together, the four guards violently twisted Coil's arm, trying to break it. Other guards appeared with shields, and Coil was eventually placed in his cell.

B. Deliberate Indifference

From December 3 through December 12, 2011, Coil was placed in an observation cell. On December 7, Coil told Sergeant Wallace, Captain Mason, Sergeant Brinkman, Lieutenant Esser and other guards on duty that he was cold and needed a blanket because his prison-issued smock was not keeping him warm. Coil also asked for a shower. None of the guards responded. Coil then told Sergeant Brinkman and Lieutenant Esser that he would overdose on pills if not given a shower and adequate clothing. Again, there was no response.

At some later time, Dr. Stacey Hoem, Dr. Shana Becker and Crisis Worker Jani Sharpe conducted a "sham" medical evaluation and ignored Coil's requests for clothing and a shower. For the rest of the week, Coil suffered from sleep deprivation and a rash on his arms; he was "extremely cold, shivering constantly for nine days straight"; and he was "forced to eat all [of his] meals with [his] hands dirty after using the bathroom."[1] Finally, Warden Tim Haines, Dr. Hoem, Dr. Becker, Jani Sharpe, Security Director J. Sweeney, Dr. Anderson, and Captain Mason were aware of his plight yet did nothing.

OPINION

I. Eighth Amendment Excessive Force Claim

In the context of an excessive force claim, a prisoner can show an Eighth Amendment violation if he or she can show that "prison officials maliciously and

[1] At the end of his complaint, Coil also alleges that he was strip-searched by a Lieutenant Brown and cavity searched by a Sergeant Stewart on December 7, but alleges no facts to suggest that this was inappropriate since Coil had threatened to overdose on pills.

sadistically use force to cause harm" and that the harm is more than *de minimis*. *Hudson v. McMillian*, 503 U.S. 1, 9-10, 112 S.Ct. 995 (1992).

Coil claims that (1) Officers Moris and Kussmaul twisted his handcuffs deep into his wrists, and (2) Moris, Kussmaul, Kiley and Boisen together attempted to break his arm. If true, the allegations would support a finding that Moris and Kussmaul's initial provocation with the handcuffs was malicious and that the harm in both instances was more than *de minimis*. It is a closer question whether the four officers' subsequent manhandling of Coil was the product of ill will, because at that point Coil had begun to resist Moris. Correctional officers are permitted to use force in a good faith attempt to quell a disturbance in prison. *Rice ex rel. Rice v. Corr. Med. Serv's*, 675 F.3d 650, 667-68 (7th Cir. 2012). Arriving late on the scene, Kiley and Boisen in particular may reasonably have believed (*if* mistakenly) that Coil was the aggressor in this situation. By alleging that Moris and Kiley told him that they would "break your arm, Asshole" *and* that all four officers then attempted to do just that, Coil nevertheless creates just enough of an inference of unnecessary roughness on their part to state a plausible excessive force claim.

II. Eighth Amendment Deliberate Indifference Claim

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Cruel and unusual conditions are those that "deprive inmates of the minimal

civilized measure of life's necessities." *Id.* This phrase is meant to be taken quite literally -- the Eighth Amendment does not "mandate comfortable prisons," and conditions that make confinement unpleasant are not enough to state an Eighth Amendment claim because regular discomforts are "part of the penalty that criminal offenders pay for their offenses against society." *Id.* at 347-49. To determine whether there have been "serious deprivations of basic human needs," courts must examine "the totality of conditions of confinement." *Madyun v. Thompson*, 657 F.2d 868, 874 (7th Cir. 1981).

Coil alleges that he was placed in observation for nine days, all while he was denied the ability to shower or wash his hands, and given insufficient clothing to stay warm in his "extremely cold" cell. While failure to provide regular showers cannot be considered objectively cruel and unusual, the lack of *any* ability to clean himself for nine days arguably violates contemporary standards of decency, particularly when medical complications such as rashes result. The lack of adequate clothing and heating may also constitute serious deprivation, particularly because Coil alleges that he was unable to sleep and was shivering constantly. Together or separately, these deprivations amount to conditions of confinement that could violate the Eighth Amendment if deliberately ignored. To complete his claim, Coil must allege that defendants wantonly or deliberately disregarded the fact that his cell conditions were unbearable, which he does by asserting that the on-duty guards, the doctors who came to see him, and the administrators at the prison all knew about his situation.

In contrast, the court finds the claims against the administrators are not plausible, absent specific allegations showing how or why they would have notice of some kind.[2] On the other hand, Coil may proceed against the defendants that he alleges were actually at his cell or who heard him ask for help. For purpose of this screening order, the court assumes that each of the named guards and doctors on the scene had the ability to assist him, and that failure to remedy the situation was the result of conscious indifference, rather than lack of authority.

Finally, while Coil's allegations against the defendants satisfy the court's lower standards for screening, he will ultimately need to come forward with *admissible* evidence permitting a reasonable trier of fact to conclude that the defendants acted with deliberate indifference to his conditions of confinement. This is a much higher standard than applied to an initial screening. Additionally, Coil should be aware that inadvertent error, negligence and gross negligence are insufficient grounds to invoke the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). Going forward, it will be Coil's burden to prove that his conditions of confinement constituted a cruel and unusual condition depriving him of "basic human needs." Additionally, he must also prove that each defendant (1) *knew* his conditions of confinement caused serious pain and suffering, and (2) deliberately ignored those conditions.

[2] In addition, Coil's claims against the John Doe defendants are insufficiently developed and, given that the case will proceed against several named defendants, likely redundant. At least as pled, therefore, these claims may not proceed.

ORDER

IT IS ORDERED that:

(1) Plaintiff Bobby Lee Coil's motion for leave to proceed is GRANTED with respect to his Eighth Amendment excessive-force claim against defendants Moris, Kussmaul, Kiley and Boisen, and his Eighth Amendment deliberate-indifference claim against defendants Sergeant Wallace, Captain Mason, Sergeant Brinkman, Lieutenant Esser, Dr. Stacey Hoem, Dr. Shana Becker and Crisis Worker Jani Sharpe.

(2) Plaintiff's motion for leave to proceed is DENIED in all other respects.

(3) 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.

(4) For the time being, plaintiff must send defendants a copy of every paper or document 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.

(6) 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 his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 6th day of November, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge