IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JERRY SAENZ,

OPINION AND ORDER

Plaintiff,

13-cv-697-bbc

v.

JANEL NICKEL, NANCY WHITE,
LON R. BECHER, KAREN ANDERSON,
DAWN M. LAURENT, KURT SCHWEBKE,
MICHAEL MEISNER, DONALD MORGAN,
JESSICA HARRIS, NICHOLAS BUHR,
SONNETTE M. CALDWELL-BARR
and DALIA SULIENE,

Defendants.

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Pro se prisoner Jerry Saenz has filed a proposed complaint under 42 U.S.C. § 1983 in which he brings two claims under the Eighth Amendment, which prohibits cruel and unusual punishment. First, he says that, while housed in solitary confinement at the Columbia Correctional Institution, he overdosed on medication because none of the defendants took any action to control his access to the medication, even though they knew about his history of attempted suicide and the tendency of mentally ill prisoners housed in segregation to abuse their medication. Second, he says that defendants Nicholas Buhr, Jessica Harris, Dawn Laurent and Sonnette Caldwell-Barr placed him in conditions of confinement that deprived him of minimal civilized measure of life's necessities for 21 days.

Plaintiff has made an initial partial payment of the filing fee as required by 28 U.S.C. § 1915(b)(1), which means his complaint is ready for screening under 28 U.S.C. § 1915A. Having reviewed the complaint, I conclude that he has stated a claim upon which relief may be granted under the Eighth Amendment with respect to both of his claims.

The Supreme Court has interpreted the Eighth Amendment to mean that "punishment must not involve the unnecessary and wanton infliction of pain." Gregg v. Georgia, 428 U.S. 153, 173 (1976). Thus, a claim under the Eighth Amendment has an objective component and a subjective component, but the elements for proving a violation in a given case depend on context. Whitley v. Albers, 475 U.S. 312, 320 (1986) ("The general requirement that an Eighth Amendment claimant allege and prove the unnecessary and wanton infliction of pain should . . . be applied with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged."). See also Rhodes v. Chapman, 452 U.S. 337, 346 (1981) ("No static 'test' can exist by which courts determine whether conditions of confinement are cruel and unusual.").

In some cases, the Supreme Court and the Court of Appeals for the Seventh Circuit have described the objective component of an Eighth Amendment violation as a deprivation of "the minimal civilized measure of life's necessities" or, more simply "the serious deprivation of basic human needs," such as food, clothing and shelter. E.g., Rhodes, 452 U.S. at 347; Vinning-El v. Long, 482 F.3d 923, 924 (7th Cir. 2007); Gillis v. Litscher, 468 F.3d 488, 494 (7th Cir. 2006). Courts have also framed the question as whether conditions violate "contemporary standards of decency," Rhodes, 452 U.S. at 346; Thomas v. Ramos,

130 F.3d 754, 763 (7th Cir. 1997), and whether the conditions violate "the dignity of man." Hope v. Pelzer, 536 U.S. 730, 738 (2002). Perhaps the most common formulation is whether the plaintiff was exposed to a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825 (1994); Atkins v. City of Chicago, 631 F.3d 823, 830 (7th Cir. 2011); Prude v. Clarke, 675 F.3d 732, 734 (7th Cir. 2012); Alvarado v. Litscher, 267 F.3d 648, 651-52 (7th Cir. 2001); Dixon v. Godinez, 114 F.3d 640 (7th Cir. 1997); Antonelli v. Sheahan, 81 F.3d 1422, 1431 (7th Cir. 1996).

With respect to the subjective component in the context of a claim about a prisoner's conditions of confinement, the plaintiff must prove the prison officials were "deliberately indifferent to the adverse conditions." Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650, 665 (7th Cir. 2012). An official is deliberately indifferent when he is subjectively aware of the condition or danger complained of, but consciously disregards it. Id.

With respect to plaintiff's claim regarding his overdose, plaintiff alleges that each of the defendants knew that he was seriously mentally ill, that he had a history of self harm and that many seriously mentally ill prisoners in segregation had overdosed intentionally on medication in the past, but that defendants took no action to limit his access to so-called "non-controlled" medications after he was placed in solitary confinement. In particular, plaintiff says that defendants should have prohibited prisoners like him from keeping "non-controlled" medications in his cell and prison staff should have dispensed individual doses of medication to plaintiff and monitored his ingestion of the medication. As a result of defendants' failure to take these steps, plaintiff says, in May 2012, he overdosed on a

combination of more than 150 over-the-counter medications, blood pressure medication and heart medication, requiring hospitalization for five days.

It is well established that prison officials have a duty under the Eighth Amendment to protect prisoners from harming themselves as a result of a mental illness. Minix v. Canarecci, 597 F.3d 824, 833 (7th Cir. 2010); Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). Accordingly, I conclude that plaintiff's allegations are sufficient at the pleading stage to show that defendants knew of a substantial risk of serious harm to plaintiff's health and safety and that they consciously failed to take reasonable steps to prevent the harm.

At summary judgment or trial, plaintiff will have to come forward with specific evidence regarding each defendant's knowledge of a *substantial* risk that plaintiff or prisoners in his situation were likely to *seriously* harm themselves with "non-controlled" medications. It will not be enough for plaintiff to show that one or more defendants were aware of a general risk that plaintiff might be harmed in some way. Rice ex rel. Rice, 675 F.3d 650, 679 (7th Cir. 2012). In addition, he will have to show that each defendant had the ability to take reasonable steps that could have prevented his overdose.

With respect to plaintiff's cell conditions claim, he alleges that he was placed in observation status for 21 days after he returned from the hospital. While housed in that cell, he was naked except for a canvas smock that did not provide him adequate warmth; he did not have any bedding with the exception of a rubber mat; he was not allowed to shower, brush his teeth, wash his face or clip his nails; he was not allowed tissues and received only four squares of toilet paper, which was not sufficient to clean himself; he was required to eat

meals with his fingers; he was not allowed to read or call a family member. In addition, plaintiff says that the cell was "overrun with ants and bed bug-like insects," but he was not allowed to clean his cell. Although defendants Buhr, Harris, Laurent and Caldwell-Barr knew about his conditions and could have remedied them, they refused to take any action.

I conclude that plaintiff has stated a claim upon which relief may be granted because his allegations are sufficiently similar to other cases in which the Court of Appeals for the Seventh Circuit has found potential Eighth Amendment violations. E.g., Vinning-El, 482 at 923-24 (prisoner stated claim under Eighth Amendment by alleging that he was "stripped of his clothing and placed in a cell in the disciplinary-segregation unit"; he was "not permitted to take any personal property with him"; "floor of the cell was covered with water, the sink and toilet did not work, and the walls were smeared with blood and feces" and he did not have "a mattress, sheets, toilet paper, towels, shoes, soap, toothpaste, or any personal property, for six days"); Gillis, 468 F.3d at 493 (reasonable jury could find Eighth Amendment violation when prisoner alleged that he had been "[s]tripped naked in a small prison cell with nothing except a toilet; forced to sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf'; and given just a modicum of toilet paper-four squares-only a few times").

At summary judgment or trial, plaintiff will have to come forward with specific evidence showing that he was denied the minimal civilized measure of life's necessities or that the conditions of his cell subjected him to a substantial risk of serious harm. In addition, he will have to show that each defendant knew about his cell conditions and could

have remedied them. To the extent that plaintiff was subjected to certain conditions to prevent him from engaging in further acts of self harm, he will have to show that defendants knew of reasonable alternatives and could have implemented them but consciously refused to do so. Rice, 675 F.3d at 666-67 (affirming dismissal of claim that conditions of segregation violated Eighth Amendment for plaintiff's failure to identify feasible alternative).

Finally, plaintiff should be aware of Wilson v. Seiter, 501 U.S. 294, 305 (1991), in which the Supreme Court stated that "[n]othing so amorphous as 'overall conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." Rather, "conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise—for example, a low cell temperature at night combined with a failure to issue blankets." Id. Thus, to prevail on this claim, it will not be enough for plaintiff to argue generally that his "overall conditions" violated the Eighth Amendment. He will have to have to show that each condition independently violated his rights or that a combination of deprivations had a mutually reinforcing effect on a particular need.

ORDER

IT IS ORDERED that

1. Plaintiff Jerry Sanez is GRANTED leave to proceed on the following claims under

the Eighth Amendment: (1) defendants Janel Nickel, Nancy White, Lon Becher, Karen Anderson, Dawn Laurent, Kurt Schwebke, Michael Meisner, Donald Morgan, Jessica Harris, Nicholas Buhr, Sonnette Caldwell-Barr and Dalia Suliene knew of a substantial risk that plaintiff would seriously harm himself in May 2012 by overdosing on "non-controlled" medications, but they failed to take reasonable steps to prevent the harm from occurring; and (2) defendants Nicholas Buhr, Jessica Harris, Dawn Laurent and Sonnette Caldwell-Barr subjected plaintiff to unconstitutional conditions of confinement for 21 days after he returned from the hospital.

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 his documents.

4. Plaintiff is obligated to pay the unpaid balance of their filing fees 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 informing him of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee

has been paid in full.

Entered this 2d day of December, 2013.

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