

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

CALVIN GLOVER,

Plaintiff,

v.

OPINION & ORDER

CO SCHRAUFRAGEL,

14-cv-864-jdp

Defendant.

Pro se plaintiff Calvin Glover is a prisoner in the custody of the Wisconsin Department of Corrections housed at the Columbia Correctional Institution (CCI). Plaintiff has filed a complaint alleging that a CCI correctional officer, CO Schraufregel, was deliberately indifferent to plaintiff's safety when he drafted a conduct report that falsely stated that plaintiff provided information against another inmate. Plaintiff alleges that defendant knew or should have known that naming plaintiff in the report "created a substantial and unreasonably risk to [his] health and safety[.]" Dkt. 1, at 3.

The court has granted plaintiff leave to proceed *in forma pauperis*, and plaintiff has paid the court-assessed initial partial payment. Dkt. 8. The next step is for the court to screen the 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. When screening a pro se litigant's complaint, the court construes the allegations liberally and in the plaintiff's favor. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010).

Now that I have considered plaintiff's allegations, I will allow him to proceed on his Eighth Amendment deliberate indifference claim and his state law libel claim.

ALLEGATIONS OF FACT

I draw the following facts from plaintiff's complaint.

On September 23, 2014, while searching plaintiff's cell, defendant found a calculator marked with another inmate's—Julius Coleman's—name and number. Defendant determined that the calculator belonged to the prison's school, and he asked plaintiff where he had gotten it. Plaintiff told defendant that another inmate—Raphael (whose last name is illegible in plaintiff's complaint)—had given it to him; he and this other inmate were classmates at the prison's school, and he had asked plaintiff to return the calculator to the school for him.

The following day, Coleman confronted plaintiff and showed him a conduct report that defendant had authored. The conduct report stated—falsely—that plaintiff had told defendant that Coleman had given him the calculator. Plaintiff alleges that as a direct result of this false statement, other prisoners have labeled plaintiff a snitch and a liar and have ostracized him. One prisoner even attacked and injured plaintiff.

Plaintiff alleges that defendant knew or should have known that identifying prisoners by name in a conduct report and stating that one prisoner provided information against another prisoner would create a substantial and unreasonable risk to the reporting prisoner.

ANALYSIS

Plaintiff brings an Eighth Amendment deliberate indifference claim, pursuant to 42 U.S.C. § 1983, and a state law libel claim.

A. Eighth Amendment

Prison officials must “take reasonable measures to guarantee the safety of the inmates,” and “[a] prison official's deliberate indifference to a substantial risk of serious harm

to an inmate violates the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 828, 832 (1994) (internal quotation marks omitted). To state an Eighth Amendment deliberate indifference claim, a prisoner must allege that he “is incarcerated under conditions posing a substantial risk of serious harm[,]” and that the defendant was deliberately indifferent to that risk. *Id.* at 834. “[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837.

Plaintiff’s story is not novel. The plight of the prison snitch is well known; even Seventh Circuit case law has acknowledged that “it’s common knowledge that snitches face unique risks in prison[.]” *Dale v. Poston*, 548 F.3d 563, 570 (7th Cir. 2008). But “a prison official does not violate the Eighth Amendment every time an inmate gets attacked by another inmate.” *Id.* at 569. Plaintiff has an Eighth Amendment claim against defendant only if he is able to demonstrate that defendant knew of and deliberately disregarded an excessive risk to plaintiff’s health or safety—i.e., the risk created by falsely informing other inmates that plaintiff “snitched.” *Id.*

At this point, plaintiff has alleged facts sufficient to proceed on an Eighth Amendment deliberate indifference claim against defendant. Plaintiff has alleged that defendant knew or should have known that identifying him by name in the conduct report would risk plaintiff’s safety and reputation at the prison. Plaintiff has alleged that defendant was aware of the substantial risk that prison snitches face and deliberately disregarded it. And as a result, another inmate assaulted plaintiff. *See, e.g., McCutcheon v. Stewart*, No. 15-cv-781, 2015 WL 5076955, at *3 (S.D. Ill. Aug. 27, 2015) (holding that plaintiff’s allegations that defendants had “deliberately exposed [plaintiff] to a substantial risk of serious harm by informing other

inmates and guards that [p]laintiff was a child molester and a snitch” were sufficient to state an Eighth Amendment claim at screening).

B. Libel

Plaintiff also brings a state law claim for libel.¹ Under Wisconsin law, a defamation claim, whether based on libel or slander, has three elements: (1) a false statement concerning another; (2) communicated by speech, conduct, or in writing to someone other than the person defamed; and (3) the statement is unprivileged and “tends to harm one’s reputation so as to lower him or her in the estimation of the community or to deter third persons from associating or dealing with him or her.” *Borzych v. Frank*, 340 F. Supp. 2d 955, 971 (W.D. Wis. 2004) (quoting *Hart v. Bennet*, 2003 WI App. 231, ¶ 21, 267 Wis. 2d 919, 672 N.W.2d 306).

At this point, plaintiff has alleged facts sufficient to proceed on his state law libel claim. Plaintiff has alleged that defendant communicated a false statement in his conduct report—namely, that plaintiff implicated inmate Coleman during his conversation with defendant about the calculator. Plaintiff alleges that the false statement wrongly labeled him as a “snitch” in the prison community, which, as discussed above, harmed plaintiff’s reputation (and created a substantial risk of harm). Plaintiff has stated a claim for relief under Federal Rule of Civil Procedure 8.

¹ Plaintiff’s complaint identifies two separate state law causes of action: one for “intentional tort,” pursuant to Wis. Stat. § 893.57; and one for libel, pursuant to Wis. Stat. § 895.05. But § 893.57 does not create an independent cause of action for “intentional tort” separate from libel; it simply provides that a plaintiff must bring an intentional tort claim—such as a claim for libel—within three years after the cause of action accrues.

ORDER

IT IS ORDERED that:

1. Plaintiff Calvin Glover is GRANTED leave to proceed on his Eighth Amendment deliberate indifference claim and his state law libel claim against defendant CO Schraufrogel.
2. 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 defendant. Plaintiff should not attempt to serve defendant on his own at this time. 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 defendant.
3. For the time being, plaintiff must send defendant 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 defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.
4. 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.
5. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered April 28, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge