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

---

CORY DEAN RENAUD,

Plaintiff,

v.

WAUPUN CORRECTIONAL INSTITUTION, PRISON OFFICIAL ANDREW MOUNGEY, SERGEANT LARSEN, TONY MELI, DR. MANLOVE, NURSE CHRIS DEYOUNG, and JANE AND JOHN DOES,

Defendants.

OPINION & ORDER

14-cv-351-jdp

---

Pro se prisoner Cory Renaud has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that prison official Andrew Moungey sexually assaulted him at the Waupun Correctional Institution, in violation of the Eighth Amendment. Dkt. 1. Plaintiff also alleges that several unnamed defendants were aware of the sexual assault and failed to protect him from it.

Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1). The next step in this case is for the court to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. In screening 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 with this principle in mind, I conclude that plaintiff has stated an Eighth Amendment claim against Moungey and I will grant him leave to proceed on this claim. Plaintiff has not offered a short and plain statement of a claim against any of the other defendants. I will therefore dismiss the complaint with regard to defendants Sergeant

Larsen, security director Tony Meli, Dr. Manlove, Nurse Chris Deyoung, and Jane and John Does.[1] If plaintiff chooses, he may amend his complaint with regard to these defendants. I will deny plaintiff leave to proceed against defendant Waupun Correctional Institution, which is not a proper defendant under § 1983.

## ALLEGATIONS OF FACT

In his complaint, plaintiff alleges the following facts.

Plaintiff is currently a prisoner at the Green Bay Correctional Institution, but his complaint primarily describes an assault that occurred while he was incarcerated at the Waupun Correctional Institution (WCI). Plaintiff alleges that defendants are WCI employees. On February 25, 2014,[2] plaintiff was in segregated confinement at WCI. While there, a "suit-up" team forced plaintiff into a strip search cell, although plaintiff does not explain why this occurred. Officials then performed a strip search, during which defendant Moungey forced a finger into plaintiff's rectum and ripped his anal cavity. Two days later, plaintiff visited defendants Dr. Manlove and Nurse Deyoung for a rectal exam. The doctor reported anal tearing. Plaintiff alleges that, since the incident, he has suffered severe emotional distress.

The complaint also presents several tangential allegations, but they do not appear to form the substance of the claim for which plaintiff seeks relief in this case. Specifically, plaintiff asserts that he is being "abused," is not receiving proper psychiatric care, and is falsely imprisoned because of hearsay testimony presented at his criminal trial. Plaintiff does not provide details for any of these additional allegations. In addition to seeking compensatory and

[1] Plaintiff names as defendants "all prison officials who were aware but failed to do there [sic] obligated job." Dkt. 1, at 2.

[2] The dates in plaintiff's complaint do not include years. Because the complaint was filed on May 14, 2014, I assume that plaintiff is alleging conduct that occurred in 2014.

punitive damages, plaintiff's prayer for relief asks that "Moungey [be] locked up on federal charges." Dkt. 1, at 5.

Since filing his complaint, plaintiff has submitted two additional motions. The first is a "motion for a restraining order and injunction," Dkt. 6, in which plaintiff explains that a Juneau County detective has begun investigating the sexual assault. Sometime after the investigation began, plaintiff alleges that Moungey sexually harassed him, and plaintiff now seeks a restraining order to protect against what he perceives to be "[]reckless malicious deliberant [sic] and vindictive retaliatory criminal offenses." *Id.* The second motion is a "motion for legal counsel," Dkt. 7, in which plaintiff largely repeats his allegations about the detective's investigation and Moungey's subsequent conduct, and asks the court to recruit counsel to represent him in this case.

## ANALYSIS

Under Federal Rule of Civil Procedure 8, a plaintiff must present "a short and plain statement of the claim showing that [he] is entitled to relief." The purpose of the requirement is "to provide the defendant with 'fair notice' of the claim and its basis." *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). Here, I understand plaintiff to be bringing claims against all defendants under the Eighth Amendment for violating his right to be free from cruel and unusual punishment. His complaint alleges unlawful conduct that occurred during a strip search, but only discusses one defendant's role in the incident. I therefore conclude that plaintiff's allegations are sufficient to state an Eighth Amendment claim against Moungey, but not against any of the other defendants.

As a preliminary matter, plaintiff may not proceed against defendant WCI. Prisons are not "persons" within the meaning of 42 U.S.C. § 1983 and therefore not subject to suit under

the statute. *See Meyer v. Wis. Dep't of Corr.*, No. 08-cv-278, 2008 WL 2539657, at *2 (W.D. Wis. June 13, 2008) (citing *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 66-67 (1989)). WCI will be dismissed from this case.

Plaintiff's claims regarding a sexual assault that occurred during a strip search touch on two different aspects of the Eighth Amendment. First, plaintiff adequately alleges that he was subjected to an unconstitutional strip search. Strip searches are not per se unconstitutional because, although they "may be unpleasant, humiliating, and embarrassing to prisoners . . . not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003). But when prison officials conduct a strip search without a legitimate, penological justification, they run afoul of the Eighth Amendment. *Id.* In this case, plaintiff appears to allege that Moungey unnecessarily forced a finger into plaintiff's rectum and he describes the lasting adverse psychological effects that the incident has had. These statements, accepted as true for screening purposes, take plaintiff's complaint beyond a grievance for a routine strip search and plausibly allege conduct intended to humiliate or cause physical and psychological pain.

The Eighth Amendment also prohibits prison officials from using excessive force. In considering such claims, "[t]he central question 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." *Fillmore v. Page*, 358 F.3d 496, 503 (7th Cir. 2004) (internal citations and quotation marks omitted). Here, plaintiff's claim falls into the latter category. He alleges that Moungey used sufficient force during the search to cause damage to plaintiff's anal cavity. Although plaintiff does not elaborate on the extent of his injuries, he has stated a claim for excessive force. I will therefore allow plaintiff to proceed on his Eighth Amendment claims

against Moungey for performing an improperly humiliating and painful strip search and for using excessive force in conducting the search.

The complaint does not, however, provide a short and plain statement of any claim against the remaining defendants. Plaintiff alleges that he visited Dr. Manlove and Nurse Deyoung after the incident and that they discovered his injuries. Yet, there is no suggestion that either of these defendants failed to provide plaintiff with adequate medical care, actively harmed him, or tried to cover up the alleged sexual assault. Plaintiff also names security director Meli and Sergeant Larsen as defendants, but their names never appear in the substantive portion of his complaint, nor is there any indication that these defendants personally participated in the sexual assault. Because "liability under § 1983 arises only when the plaintiff can show that the defendant was 'personally responsible for a deprivation of a constitutional right,'" plaintiff fails to provide a short and plain statement of any claim against Dr. Manlove, Nurse Deyoung, security director Meli, or Sergeant Larsen. *Zentmyer v. Kendall Cnty., Ill.*, 220 F.3d 805, 811 (7th Cir. 2000). I will therefore dismiss the complaint as to these defendants and give plaintiff an opportunity to file an amended complaint that satisfies Rule 8. If plaintiff chooses to amend his complaint, he must explain what these defendants did to violate his rights in connection with the strip search or subsequent medical treatment.

Plaintiff further alleges that "all prison officials 1st and 2nd shift were and are aware [of the assault], but failed to do what their job obligates them to do, uphold the law." Dkt. 1, at 3. I assume plaintiff intends this statement to allege that defendants Jane and John Does failed to protect him from a sexual assault that they knew would occur. At this point, however, plaintiff does not provide a short and plain statement of any Eighth Amendment claim for failure to protect. Although he generally avers that these defendants were and are aware of the assault, plaintiff fails to explain whether any of these prison officials were present during the assault or

had the power to prevent it. Moreover, plaintiff does not allege how these defendants came to know that the assault would occur. "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As it stands, plaintiff's complaint with regard to the unnamed prison officials falls short of this standard. I will therefore dismiss the complaint as to defendants Jane and John Does and give plaintiff an opportunity to file an amended complaint that satisfies Rule 8. If plaintiff chooses to amend his complaint, he must explain with at least minimal particularity: (1) who these defendants are; (2) how these defendants came to know about the assault; and (3) what these defendants could have done to protect him from the assault.

In addition to screening plaintiff's complaint to determine whether he states viable legal claims, this order must address three related issues in this case. First, part of plaintiff's prayer for relief asks the court to bring federal criminal charges against Moungey and to order him "locked up." Dkt. 1, at 5. Because the court lacks the authority to initiate criminal proceedings or summarily incarcerate a person, this portion of the prayer for relief must be dismissed. Plaintiff may proceed with his claim for money damages.

Second, I will deny plaintiff's motion for a preliminary injunction and restraining order, which appears to be an effort to minimize his contact with Moungey. Plaintiff is no longer incarcerated at WCI and, presumably, no longer likely to encounter Moungey. Based on the papers before the court, a restraining order is not necessary to protect plaintiff.

Third, I will deny plaintiff's request for assistance in recruiting counsel. Litigants in civil cases do not have a constitutional right to a lawyer and the court has discretion to determine whether assistance in the recruitment of counsel is appropriate in a particular case. *Pruitt v. Mote,* 503 F.3d 647, 654, 656 (7th Cir. 2007). To prove that assistance in recruiting counsel is

necessary, plaintiff must: (1) give the court the names and addresses of at least three lawyers who declined to represent him in this case; and (2) demonstrate that his is one of those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds plaintiff's demonstrated ability to prosecute it. *Id.* at 655; *see also Young v. Cramer*, No. 13-cv-077, 2013 WL 5504480, at *2 (W.D. Wis. Oct. 3, 2013). Plaintiff has not included any rejection letters from attorneys who have declined to represent him, and he therefore fails the first part of this test. Moreover, plaintiff's "case is too new to allow me to determine whether he is competent to prosecute his lawsuit himself and, if he is not, whether the appointment of counsel would make a difference in the outcome of the suit." *Williams v. Nelson*, No. 04-cv-0774, 2005 WL 300371, at *1 (W.D. Wis. Feb. 1, 2005). Plaintiff's motion will therefore be denied without prejudice to his refiling it at a later date, with proof of his efforts to recruit counsel.

ORDER

IT IS ORDERED that:

1) Plaintiff Cory Dean Renaud is GRANTED leave to proceed on his Eighth Amendment claims against defendant Andrew Moungey for a strip search that occurred on February 25, 2014;

2) The complaint is DISMISSED with regard to claims against defendants Sergeant Larsen, Security Director Tony Meli, Dr. Manlove, Nurse Chris Deyoung, and Jane and John Does. Plaintiff may have until October 29, 2014, to file an amended complaint that: (1) repeats the allegations and claims on which the court has allowed plaintiff to proceed; and (2) provides a short and plain statement of a claim against the remaining defendants;

3) Plaintiff is DENIED leave to proceed on his claims against defendant Waupun Correctional Institution. The prison and any portions of the complaint stating claims against it are DISMISSED from this case;

4) Plaintiff's "motion for a restraining order and injunction," Dkt. 6, and "notice of motion, motion for legal counsel," Dkt. 7, are DENIED;

5) 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;

6) 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;

7) 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 defendants. Plaintiff should not attempt to serve defendants 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 defendants; and

8) 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 October, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge