

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

ERIK DEMETRIUS WHITE,

Plaintiff,

OPINION AND ORDER

v.

14-cv-759-wmc

KEITH TANULA,

Defendant.¹

Plaintiff Erik Demetrius White is presently in custody at the Redgranite Correctional Institution in Redgranite, Wisconsin. White filed this proposed civil action under 42 U.S.C. § 1983, challenging the conditions of his confinement while he was placed in the Douglas County Jail in Superior, Wisconsin. Plaintiff seeks leave to proceed under the federal *in forma pauperis* statute. As he has paid an initial, partial filing fee as required by the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(b)(1), this court must now screen White'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 money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. 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). After considering the pleadings under this lenient standard, White may proceed on an Eighth Amendment excessive force claim.

¹ Previous orders entered in this case listed the Douglas County Jail as a defendant in addition to Keith Tanula. Upon close inspection, the only defendant listed in the complaint is Keith Tanula of the Douglas County Jail. Accordingly, the caption of the case above has been corrected to reflect Tanula as the only defendant.

ALLEGATIONS OF FACT²

In June of 2013, White was serving a sentence of confinement in the maximum security portion of the Douglas County Jail. Following dinner time on June 13, Officer Keith Tanula came to White's cell to collect his meal tray, which White had set by the cell door. When Tanula arrived, however, White "happened to be using the bathroom" and could not hand the tray to Tanula. As Tanula entered White's cell to retrieve the tray, White flushed the toilet and turned to pick up the tray. While bending over to do so, White claims that Tanula struck him twice in the sternum, where he previously had surgery. Tanula then used mace on him and continued to punch him until White felt he had no other option but to defend himself. When another officer (Sara Lobermeier) intervened, White laid on the ground with his hands behind his back. Although White was not resisting, Tanula continued to mace him before placing him in handcuffs.

White submitted security camera footage of the incident as a supplement to his complaint (dkt. #7), which the court construes to be an attachment to the complaint. *See Bogie v. Rosenberg*, 705 F.3d 603, 608-09 (7th Cir. 2013) (acknowledging a district court's review of a video attached to a complaint at motion to dismiss stage because the video was attached to the complaint). In the video, White begins to walk towards the cell door when Tanula opens it. White appears to bend over, and then Tanula makes contact and pushes White backwards, and White backs away into the corner of the cell. Tanula then stands next to the cell bed, and he and White appear to speak to each other for a few moments. Then White picks up an object out of view of the camera. At that point Officer

² For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

Lobermeier enters the cell. The three appear to speak for a moment, and then White walks to the opposite side of the bed from Tanula. At this point, Tanula and White begin grappling, but it is unclear who raises their hand first. Lobermeier then appears to assist Tanula, and the two officers eventually pin White to the ground. The video is unclear, but it does appear that Lobermeier maces White, and they hold him on the ground for a moment, then lift him up and remove him from the room.

White claims that Tanula used excessive, unnecessary force against him. White claims further that his probation was revoked because of this incident and that he was wrongfully sentenced to prison for 36 months. He seeks compensatory damages for the violation of his constitutional rights.

OPINION

White alleges that Officer Tanula used unnecessary force against him. “The ‘unnecessary and wanton infliction of pain’ on a prisoner violates his rights under the Eighth Amendment.” *Lewis v. Downey*, 581 F.3d 467, 475 (7th Cir. 2009) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). On the other hand, the use of *de minimis* force, so long as it is not of the sort “repugnant to the conscience of mankind,” does not implicate the Eighth Amendment. *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). If force is more than *de minimis*, then the court must consider “whether it ‘was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.’” *Id.* (quoting *Hudson*, 503 U.S. at 7).

Based on White’s allegations that Tanula punched him, maced him while he was standing and then continued to mace him while he was lying on the ground handcuffed, the

court cannot conclude that Tanula used *de minimus* force. And although White's probation was revoked, and he was sentenced to another 36 months of confinement for his misconduct, leads the court to believe that White may have been more completely devoid of fault during the altercation, the court cannot conclude at this early stage that Tanula's actions do not appear to be an effort to maintain discipline. Furthermore, the video is grainy and does not include sound, so it leaves many questions about this encounter. Most importantly, the video does not contradict all of the allegations in the complaint. In particular, it appears to affirm White's allegations that Tanula struck him when the cell door opened and that White was held and maced after he laid on the ground. Understanding that the bar will be much higher to proceed past summary judgment, White may, therefore, proceed with his Eighth Amendment excessive force claim against Tanula.

ORDER

IT IS ORDERED that:

1. Plaintiff Erik Demetrius White's request for leave to proceed on his Eighth Amendment excessive force claim against Defendant Keith Tanula is GRANTED.
2. 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 the defendants' attorney.
3. 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.

4. The summons, complaint and a copy of this order are being delivered to the U.S. Marshal for service on defendants.

Entered this 27th day of July, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge