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

ALGERNON CALDWELL, JR.,

Plaintiff,

v.

DAVID J. MAHONEY,
LT. BRIAN HAYES, SGT. LURQUIN,
DEPUTY FLOYD, DEPUTY WILLIAM,
DEPUTY WEITZ, DEPUTY WOCK,
DEPUTY FOREST, DEPUTY LUCAS, and
UNKNOWN DEPUTIES,

Defendants.

OPINION & ORDER

Case No. 18-cv-1074-wmc

Pro se plaintiff Algernon Caldwell, Jr., brings this action under 42 U.S.C. § 1983, claiming that the conditions of the Dane County Jail violate his constitutional rights. Previously in this lawsuit, the court directed Caldwell to file an amended complaint to narrow his claims. (Dkt. #23.) Caldwell did so (dkt. #26), and the court has taken his amended complaint under advisement for screening as required by 28 U.S.C. §§ 1915(e)(2), 1915A.[1] After review, the court concludes that plaintiff has articulated a Fourteenth Amendment due claim related to his conditions of confinement between October and December 2019, and he will be allowed to proceed against three of his proposed defendants. Finally, Caldwell more recently filed a motion for a temporary restraining order (dkt. #30), which the court will deny for the reasons set forth below.

[1] The court has amended the caption of this lawsuit to include the defendants that plaintiff added in his amended complaint.

ALLEGATIONS OF FACT[2]

Caldwell is currently incarcerated at Green Bay Correctional Institution ("GBCI"), but was previously an inmate at the Dane County Jail in Madison, Wisconsin. He names the following current or former Dane County Jail employees as defendants: Sheriff David Mahoney, Lt. Brian Hayes, Sgt. Lurquin, Deputy Floyd, Deputy William, Deputy Weitz, Deputy Wock, Deputy Forest, Deputy Lucas and an unidentified number of unknown deputies.

Between October 2018 and December 2019, Caldwell was an inmate at the Dane County Jail on multiple occasions, during which he claims to have been wrongfully exposed to unsanitary conditions of confinement, including sewer flies, clogged toilets and sewage, and black mold. He also alleges that his complaints to defendants about those conditions went largely unaddressed.

Specifically, in October 2018, Caldwell alleges that he was housed in an administrative confinement cell that had blood on the walls and ceiling. Although Caldwell allegedly complained to certain unidentified deputies about the blood, he did not receive supplies to clean his cell for four days, nor apparently was he moved to a different cell.

Between November and December of 2018, Caldwell was also allegedly housed in a unit where another inmate had recently been sprayed with "OC." Caldwell claims that the lingering effects of the OC caused him to experience burning in his eyes and nose, along with problems in his throat and chest. He further alleges that he spoke with an unidentified

[2] Courts must read allegations in *pro se* complaints generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in the amended complaint when viewed in a light most favorable to plaintiff.

female deputy about his symptoms, who responded that he would need to be decontaminated but then failed to provide him access to a shower. As a result, his symptoms allegedly worsened. Caldwell has not alleged whether he sought out or received medical attention for the burning or apparent breathing issues, but it appears that he was not able to shower until the next day. Caldwell returned to the Dane County Jail between May and June of 2019. Defendant Floyd was the deputy in charge of his unit, and although Caldwell allegedly informed Floyd and other deputies that a clogged toilet had been overflowing with feces and urine for several days, no one fixed that toilet. Instead, according to Caldwell, inmates were told by Floyd and other deputies to simply place blankets around the toilet that was overflowing. After a few hours, however, Caldwell allegedly informed Floyd that the blankets were not working, and Floyd responded that he would deal with it the next day. About 30 minutes later, the clogged toilet allegedly flooded the entire living unit with feces and foul water. Caldwell does not allege precisely when the toilet was fixed.

In September 2019, Caldwell and other inmates allegedly were without working water for three days, and had to live with a clogged toilet with feces and urine again for seven days. When Caldwell spoke with defendant Deputy Wock about the unsanitary conditions and lack of water, however, Wock allegedly refused to provide inmates access to the shower for running water, failed to address the clogged toilet and refused to provide the inmates with pitchers of water. After subsequently filing a grievance about this lack of water and unsanitary conditions, Caldwell also claims that defendant Hayes responded that some of the issues he raised in his grievance were simply ongoing problems due to the

age of the jail. Moreover, even after he submitted this grievance, Caldwell alleges that Wock provided his unit no more than two pitchers of water, which was insufficient for seven inmates to share.

On September 29, 2019, a toilet in Caldwell's unit was clogged with feces and urine, which was left unaddressed for five days. Caldwell claims that Wock failed to address this issue or submit a work order to have the toilet fixed.

In December 2019, Caldwell was housed in administrative confinement at the jail. After observing about 100 sewer flies and black mold in the shower walls and ceiling, he also submitted a request for the shower to be cleaned. Despite this, Caldwell claims that he was forced to shower in those conditions for "numerous" days, and that defendant Lucas and unknown deputies still failed to take corrective action.

Finally, Caldwell claims that defendant Lurquin was in charge of the daily operations of the City County Building where the jail is located, but he failed to correct any of these unsanitary conditions. He similarly claims that defendant Forest was in charge of conducting quarterly cleaning for the living units, but between October 2018 and March 2019, Forest did not clean them.

OPINION

While not apparent in his complaint, the court will infer for purposes of screening that plaintiff was a pretrial detainee, rather than a convicted prisoner, during the relevant time period, which means his claims will be evaluated under the due process clause of the Fourteenth Amendment. *Smith v. Dart*, 803 F.3d 304, 309–10 (7th Cir. 2015). In

particular, the Court of Appeals for the Seventh Circuit has concluded that conditions of confinement claims brought by pretrial detainees are governed by the due process clause of the Fourteenth Amendment, under the standard set forth by the United States Supreme Court in *Kingsley v. Hendrickson,* 135 S. Ct. 2466 (2015). *Hardeman v. Curren*, 933 F.3d 816, 821-22 (7th Cir. 2019). The failure to provide adequate conditions of confinement violates the Due Process Clause if: (1) the defendants acted with purposeful, knowing, or reckless disregard of the consequences of their actions; and (2) the defendants' conduct was objectively unreasonable. *Miranda v. Cty. of Lake,* 900 F.3d 335, 353 (7th Cir. 2018). While it is not enough to show negligence, the plaintiff is not required to prove an individual defendant's subjective intent for his conduct to be deemed unreasonable; instead, the defendants' actions are judged under an objective reasonableness standard. *Id.* at 353.

Under this standard, the court will grant plaintiff leave to proceed against Floyd, Hayes, and Wock, for their alleged failure to take more prompt and effective action in response to the clogged toilet and lack of running water. In *Hardeman*, the Seventh Circuit concluded that a putative class of pretrial detainees who were subjected to a three-day water shut-down and "became ill," while "feces built up and festered in the jails' toilets," was enough to state a claim under the Fourteenth Amendment. 933 F.3d at 819. The court noted that the jail officials provided a legitimate reason for turning off the water, but found this justification was not alleged in the complaint, and the "problems caused by limited drinking water may have been exacerbated by the lack of water for sanitation and the consequent exposure to feces and insects." *Id.* at 821.

Plaintiff similarly alleges here that in May and June of 2019, defendant Floyd was aware plaintiff was exposed to a clogged toilet that resulted in a flood of urine and feces, which was left unaddressed for "several days"; and in September 2019, defendants Wock and Hayes were aware that plaintiff had no access to running water for three days *and* was exposed to feces and urine from a clogged toilet for seven days, but failed to take corrective action. Those allegations are sufficient to pass muster under the generous standard that applies at screening. Even though fact-finding may bear out that the conditions were not as severe as plaintiff now alleges, or that defendants responded reasonably given the actual circumstances, plaintiff's allegations support an inference at this stage that they responded recklessly to plaintiff's exposure to unsanitary conditions.

At the same time, the court will dismiss defendants Mahoney, Weitz, Lurquin, Forest and Lucas, since plaintiff's allegations do not support even an inference that they responded unreasonably to plaintiff's conditions of confinement. As for Forest and Lurquin, plaintiff's allegations suggest that they were responsible for periodic cleaning or maintenance of the building in which plaintiff was housed between October 2018 and March 2019, and they did not properly clean or maintain the facility. Yet plaintiff's amended complaint identifies discrete, short-term instances of unsanitary conditions; he does not allege that these defendants were actually aware of the particular conditions to which he was subjected. As such, Forest's and Lurquin's alleged failure to take corrective action is insufficient to support a finding that they responded unreasonably to plaintiff's circumstances.

As for defendant Lucas, plaintiff's allegations about sewer flies and mold in the showers in December 2019 do not support a constitutional claim as currently pled. Indeed, although plaintiff states that he saw approximately 100 flies in the shower area, he does not allege that they were present in his living quarters. Further, plaintiff claims that he saw the flies for "several" days before it was cleaned, which is too short a time to give rise to a reasonable inference that he was subjected to objectively unreasonable conditions of confinement. *Compare Smith v. Dart*, 803 F.3d 304, 312-13 (7th Cir. 2015) ("[T]he mere presence of a laundry list of pests, without more, is not sufficient to state a constitutional claim.") *and Sain v. Wood*, 512 F.3d 886 (7th Cir. 2008) (while unpleasant, allegation of cockroach infestation spanning six years, including being bitten twice, did not constitute a constitutional violation), *with Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996) (prisoner stated claim under the Eighth Amendment by alleging that "cockroaches were everywhere, crawling on his body (along with mice) and constantly awakening him, and causing the environment to be unsanitary") (internal quotations omitted). While plaintiff may seek leave to amend his complaint to provide additional details about the pervasiveness of the bug problem, and more importantly, Lucas's knowledge of the scope of that problem, the court will not grant leave to proceed on a Fourteenth Amendment claims related to bugs or mold on the facts alleged to date.

Nor may plaintiff proceed against defendants Mahoney, William or Weitz on any claim in this lawsuit. Even assuming that the conditions to which plaintiff was subjected were sufficiently severe or pervasive enough to implicate his Fourteenth Amendment rights, plaintiff has also not alleged that Mahoney or Weitz either knew that plaintiff was exposed

to these conditions or failed to take corrective action. Since "individual liability under § 1983 requires personal involvement in the alleged constitutional violation," *Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010), plaintiff may not proceed on any claim against Mahoney, William or Weitz in this lawsuit either.

Finally, plaintiff describes multiple unidentified deputies that he also alerted to the unsanitary conditions at the jail, but the court will not grant plaintiff leave to proceed against these unidentified deputies as currently pleaded. More specifically, as for the female deputy to whom plaintiff allegedly reported "discomfort" caused by exposure to O.C. spray in November and December of 2018, he does not allege that anyone actually informed this deputy that he was experiencing difficulty breathing or required medical attention. Therefore, her failure to ensure that he could shower that day, if any, does not give rise to an inference that she responded to his actual complaint unreasonably.

Plaintiff's other references to wholly unidentified, generic deputies are also too vague to support an inference that they were aware plaintiff was being subjected to objectively unreasonable conditions of confinement. For example, although plaintiff alleges that he was placed in a cell with blood on the walls and ceiling, he further acknowledges his exposure to this condition was for a relatively brief period of time -- just four days -- and he has not alleged when he alerted these deputies to the problem in his cell. That said, given that plaintiff alleges other deputies were involved in the events implicating defendants Floyd, Wock and Hayes, should discovery in this case disclose the identities of these other individuals, as well as provide more detail as to their actions and knowledge about the unsanitary conditions plaintiff was subjected to, he may still seek

leave to amend his complaint, provided he does not wait too long to seek this discovery or move for amendment once it is secured For now, however, the court will grant plaintiff leave to proceed only against defendants Floyd, Hayes and Wock.

II. Motion for temporary restraining order or preliminary injunction (dkt. #30)

As noted at the outset of this opinion, plaintiff also filed a motion for a temporary restraining order or preliminary injunction, apparently seeking relief related to the current conditions of confinement at the Dane County Jail. However, plaintiff is now incarcerated at GBCI and has neither alleged nor is likely to be able to allege facts suggesting that the conditions in the jail remain the same, much less that there is a reasonable likelihood that he will be transferred to that same jail **and** be subjected to those same conditions again. Thus, his motion must be denied as moot. *See Maddox v. Love*, 655 F.3d 709, 716 (7th Cir. 2011) (claims for injunctive relief rendered moot by transfer of inmate to different institution and no showing of a "realistic possibility" that he would be reincarcerated at the same facility under similar conditions).

ORDER

IT IS ORDERED that:

1. Plaintiffs Algernon Caldwell, Jr. is GRANTED leave to proceed on a Fourteenth Amendment conditions of confinement claim against defendants Floyd, Wock and Hayes.

2. Plaintiff is DENIED leave to proceed on any other claim, and defendants Mahoney, Lurquin, William, Weitz, Forest and Lucas are DISMISSED.

3. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon defendant.

4. For the time being, plaintiffs must send defendant a copy of every paper or document they file with the court. Once plaintiffs have learned what lawyer will be representing defendant, they should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiffs unless plaintiffs show on the court's copy that he has sent a copy to defendant or to the defendant's attorney.

5. Plaintiffs should keep a copy of all documents for their own files. If plaintiffs do not have access to a photocopy machine, they may send out identical handwritten or typed copies of their documents.

6. If a 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 failure to prosecute.

7. Plaintiff's motion for temporary restraining order or preliminary injunction (dkt. #30) is DENIED.

Entered this 16th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge