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

ANTONIO CORREA,

Plaintiff,

v.

GARY BOUGHTON, SGT. WALLACE and C.O. HAACK,

Defendants.

OPINION and ORDER

Case No. 16-cv-481-wmc

Pro se plaintiff Antonio Correa contends that employees of the Wisconsin Department of Corrections violated his constitutional rights and state law while he was incarcerated at the Wisconsin Secure Program Facility. Because Correa is proceeding *in forma pauperis*, his complaint must be screened under 28 U.S.C. § 1915(e)(2). After reviewing the complaint, the court concludes that Correa may proceed with claims under the Eighth Amendment, but not on his state law statutory claims.

ALLEGATIONS OF FACT[1]

During the relevant time period, plaintiff Antonio Correa was an inmate at the Wisconsin Secure Program Facility, where defendant Gary Boughton is the warden, defendant Wallace is a sergeant, and defendant Haack is a correctional officer.

On January 1, 2016, at about 7:30 p.m., Officer Haack came to Correa's cell to pass out medication. Correa asked Haack, "How are you doing?" Haack responded that he "had some things going on," that his supervisors had him in their office for about two hours, that

[1] In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the facts above based on the allegations in Correa's complaint.

he felt they were not "being straight with him." Correa told Haack, "You got your problems and I got mines, but I'ma deal with mines by hanging myself, feel me." Haack responded by saying, "Don't say that, my father killed himself." Correa then told Haack, "I'm serious. You guys are going to come in here and find me hanging, I'm tired of all this and I'm ready to go and I don't know what else to do." Haack then said, "that's not the way to deal with your problems. There are other ways to solve your problems." Then Haack walked away. About 30 minutes later, Correa attempted to hang himself.

The inmate in the cell across from Correa pushed the intercom and urged someone to check on Correa because: (1) he had told Officer Haack he was going to hang himself, (2) Haack did nothing, and (3) Correa was no longer responding to the inmate. After receiving this intercom message, Correctional Officer Gilleran went to check on Correa. Gilleran found Correa hanging in his cell and radioed a medical emergency. Correa was then cut down and transported to the local hospital. At that time, he was unconscious, and he had a swollen neck and bruises.

After he returned from the hospital, Correa was placed on observation status and placed on a liquid diet because of his swollen throat. Nevertheless, a "blended diet" tray was delivered to his cell on January 3, 2016. When Correa notified Sergeant Wallace that he was supposed to have a liquid tray because of his swollen throat, Wallace initially said he would look into it, but when Correa attempted to follow up a few minutes later, Wallace told Correa that the blended tray was all he was getting.

After that, Correa attempted to eat the food on the tray, but it caused him pain and he could not swallow. Correa then tried to notify Sergeant Wallace again, but he allegedly

responded by turning off the intercom. Sometime later, Correa was able to notify another correctional officer, who eventually brought him a liquid diet tray.

OPINION

Plaintiff purports to allege claims for (1) deliberate indifference under the Eighth Amendment, and (2) violation of Wisconsin statutes. The court addresses these two categories of claims below.

I. Eighth Amendment

The Eighth Amendment prohibits "cruel and unusual punishment." *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). More specifically, the Eighth Amendment imposes a duty on prison officials to provide "humane conditions of confinement" and to ensure that "reasonable measures" are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 834-35 (1994). An inmate may prevail on a claim under the Eighth Amendment by showing that the defendant acted with "deliberate indifference" to a "substantial risk of serious harm" to an inmate's health or safety. *Id.* at 836.

As a matter of law, attempted suicide constitutes a serious harm. *See Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010). "Deliberate indifference to a risk of suicide is present when an official is subjectively 'aware of the significant likelihood that an inmate may imminently seek to take his own life' yet 'fail[s] to take reasonable steps to prevent the inmate from performing the act.'" *Pittman ex rel. Hamilton v. County of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (alteration in original) (*quoting Collins v. Seeman*, 462 F.3d 757, 761 (7th Cir. 2006)). *See also Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650,

665 (7th Cir. 2012) ("[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies.").

Although certainly not a compelling case as pledged, plaintiff's allegations are sufficient to state claims under the Eighth Amendment against defendants Haack and Wallace. Plaintiff alleges that he told defendant Haack that he was serious about hanging himself to deal with his problems. While Haack advised plaintiff not to do that, the facts as alleged would permit an inference that Haack should have acted proactively to prevent what unfolded just 30 minutes later. Moreover, after Haack walked away, plaintiff did attempt suicide by hanging. Although there may well be a good explanation for Haack making the decision he did, the allegations in the complaint support an inference that Haack knew of a substantial risk of serious harm to plaintiff's health or safety, and yet consciously failed to take reasonable steps to prevent that harm.

With respect to Sergeant Wallace, plaintiff alleges that Wallace was told he should receive a liquid diet tray, but Wallace refused to look into it, resulting in plaintiff's attempt to eat non-liquid food and suffering pain in his throat. These allegations are weaker still regarding the potential harm plaintiff faced and the actual harm he suffered from swallowing some portion of the non-liquid diet, but they, too, are sufficient to allow plaintiff to proceed at this early stage against defendant Wallace. At summary judgment or trial, however, plaintiff will have to prove that Wallace actually knew there was a substantial risk that plaintiff would likely suffer serious harm being served one meal consisting of from a non-liquid diet. In addition, plaintiff will have to show that Wallace had the ability to take reasonable steps that could have prevented the harm, but consciously failed to do so. *Collins*, 462 F.3d at 762 ("Deliberate indifference requires a showing of 'more than mere or gross

negligence'[;] . . . . it requires a 'showing as something approaching a total unconcern for the prisoner's welfare in the face of serious risks.'") (citations omitted).

In contrast, plaintiff will not receive leave to proceed with an Eighth Amendment claim against defendant Boughton. Plaintiff states that he is bringing a claim against Boughton for "supervisory liability," but the doctrine of *respondeat superior* does not apply in the § 1983 context. A supervisory defendant cannot be held liable for a subordinate's conduct simply because of his or her position as a supervisor. *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001). To maintain a claim against a supervisory defendant, plaintiff must allege facts showing that the supervisor had sufficient *personal* responsibility in the allegedly unconstitutional conduct. Said another way, the facts must support a finding that the supervisor "directed the conduct causing the constitutional violation, or . . . it occurred with [his] knowledge or consent." *Sanville v. McCaughtry*, 266 F.3d 724, 739-40 (7th Cir. 2001) (internal citations omitted). Since plaintiff does not allege that Boughton was involved in any way in the underlying actions of Haack or Wallace, he has failed to state a claim against Boughton.

II. State Statutory Claims

Plaintiff also seeks leave to proceed on claims that defendants violated two state statutes: Wis. Stat. § 940.29 (Abuse of residents of penal facilities) and Wis. Stat. § 940.295 (Abuse and neglect of patients and residents). Both of those statutory sections, however, describe *criminal* offenses that only public law enforcement officials could pursue in court. The court is aware of no authority supporting a conclusion that either gives rise to a private

right of action. Plaintiff's recourse for that conduct, therefore, is state law enforcement. Accordingly, plaintiff may not proceed under these statutes either.

ORDER

IT IS ORDERED that:

(1) Plaintiff Antonio Correa is GRANTED leave to proceed on Eighth Amendment claims against defendants Haack and Wallace. He is DENIED leave to proceed on all other claims, and defendant Boughton is DISMISSED.

(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 the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

(3) For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the defendants or to defendants' attorney.

(4) 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.

(5) If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 22nd day of November, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge