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

SIR JORDAN COSBY,

Plaintiff,

v.

BENJAMYN S. JENSON, ANDREW M. POHL and TORRIA VAN BUREN,

Defendants.[1]

OPINION AND ORDER

20-cv-184-wmc

Plaintiff Sir Jordan Cosby, an inmate at Columbia Correctional Institution ("CCI"), claims that multiple CCI employees acted with deliberate indifference to his threats of self-harm in violation of his Eighth Amendment rights. Cosby's complaint is subject to screening as required by 28 U.S.C. § 1915A. For the reasons that follow, the court will grant him leave to proceed on Eighth Amendment claims against defendants Benjamyn S. Jenson, Andrew M. Pohl and Torria Van Buren. Cosby will need to amend his complaint if he wishes to proceed in this lawsuit against any other CCI employee.

ALLEGATIONS OF FACT[2]

In September of 2017, Cosby was incarcerated at CCI, where correctional officers Benjamyn S. Jenson and Andrew M. Pohl, psychological services unit ("PSU") staff

[1] Cosby does not include Torria Van Burren, as a defendant in the caption on his complaint form, as well as a number of others he may intend to proceed against, including PSU Supervisor Steve Schmit and unnamed PSU staff members. However, the court amended the caption to add Van Buren as a defendant.

[2] In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Unless otherwise noted, therefore, the court assumes the following facts, viewing the allegations in the complaint in a light most favorable to plaintiff and drawing all inferences in his favor.

member Torria Van Buren, PSU Supervisor Steve Schmit and several unnamed PSU staff members were working.

As a result of self-abuse, Cosby has an extensive history of being placed in observation cells at CCI. On September 20, 2017, while in restrictive housing, Cosby sent a psychological service request ("PSR") to an on-call PSU staff member, defendant Van Buren, asking to be placed in observation because he felt suicidal and was going to harm himself. Cosby does not indicate whether Van Buren responded to his request.

The next morning, at 10:55 a.m., Cosby made the same plea to defendants Jenson and Pohl, telling them that he was suicidal and was going to cut himself. In response, the officers accused Cosby of "playing a game" and apparently refused his requests for assistance. Cosby then used a pen insert to cut his right arm and swallowed the insert before losing consciousness. Five minutes later, at 11:00 a.m., "a number of staff members" from the PSU entered Cosby's cell and arranged an ambulance to take him to the hospital. Cosby had to be resuscitated in the ambulance due to significant blood loss, and required surgery to remove the pen insert.

In addition to Officers Jenson and Pohl, who are named in the caption, Cosby alleges in the complaint that PSU staff member Van Buren and her supervisor, Steve Schmit, as well as other, unnamed PSU staff members who entered his cell, should be held accountable for these alleged events.

OPINION

The Eighth Amendment imposes a duty on prison officials to ensure that "reasonable measures" are taken to guarantee an inmate's safety and health. *Farmer v.*

Brennan, 511 U.S. 825, 832 (1994). To prevail on an Eighth Amendment claim, however, a plaintiff must show more than that the defendant acted negligently toward an inmate; instead, you must show the defendants acted with "deliberate indifference" to a "substantial risk of serious harm" to the plaintiff's health or safety. *Id.* at 836. Significant self-harm, such as attempted suicide, constitutes "serious harm." *See Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010). Deliberate indifference to a risk of self-harm is present when an official is subjectively "aware of the significant likelihood that an inmate may imminently" harm himself, 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) (citations omitted). Moreover, "prison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies." *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 665 (7th Cir. 2012).

Although a close call on these limited facts, plaintiff has pleaded sufficient facts to allow him to proceed on deliberate indifference claims against correctional officers Jenson and Pohl, as well as PSU staff member Van Buren. First, plaintiff alleges a history of repeated acts of self-harm, from which the court will generously infer that these defendants were aware of the risk that he might cause himself serious harm and may need staff intervention. Second, plaintiff alleges that when he told Jenson and Pohl that he was suicidal and about to cut himself, and asked to be placed in HSU observation, they did nothing, other than accuse him of "playing games." Third, plaintiff alleges that he specifically informed Van Buren via a PSR that he was suicidal and about to hurt himself,

but Van Buren apparently took no preventative steps despite plaintiff's history of self-abuse. Viewing these facts in the light *most* favorable to plaintiff, as the court must at this early stage, these allegations may support a reasonable inference that each of these defendants failed to act despite knowing a substantial risk existed that plaintiff was going to harm himself and allowing plaintiff to seriously harm himself.[3]

As noted, plaintiff also seeks to proceed against Supervisor Schmit, along with a group of unknown PSU staff who responded after he lost consciousness, but he does not allege sufficient facts to infer that they acted with deliberate indifference. *See Minix*, 597 F.3d at 833-34 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires 'personal involvement in the alleged constitutional deprivation.'") (quoting *Palmer v. Marion County*, 327 F.3d 588, 594 (7th Cir. 2003)). If plaintiff wishes to proceed against any of these CCI employees, he will have to move to amend his complaint and clarify who these parties are and why they should be included in this lawsuit.

In particular, plaintiff cannot proceed against PSU Supervisor Schmit on the facts as alleged because he sheds no light on what role, if any, Schmit played in the events giving rise to his injuries. Instead, plaintiff simply asks that Schmit be held accountable. The court cannot reasonably infer that Schmit was even aware of plaintiff's threats of self-harm, much less what steps he should take in response. To the extent plaintiff seeks to proceed

[3] It is not clear from plaintiff's complaint whether these defendants knew plaintiff had a pen insert when he told them that he was going to cut himself, or had other reasons to know of his capacity to cause himself serious harm, much less that their or HSU's intervention was necessary to prevent that harm. At this stage, however, the court will construe any ambiguities in favor of plaintiff, understanding that he will need to prove these things with admissible evidence in order to ultimately prevail.

against Schmit in a supervisory capacity, such a claim is also unavailable here. Supervisors cannot be held liable under § 1983 on a theory of *respondeat superior* unless they either knew about unconstitutional "conduct and facilitate[d] it, approve[d] it, condone[d] it, or turn[ed] a blind eye for fear of what she might see" *Matthews v. City of East St. Louis,* 675 F.3d 703, 708 (7th Cir. 2012). A supervisor might also be held liable for flawed policies or deficient training, over which the supervisor had control, if the policies or training amount to deliberate indifference. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989). Neither situation applies here: plaintiff does not allege that Schmit knew about deliberate indifference on the part of employees he supervised, nor that Schmit knew about or condoned policies or trainings that amounted to deliberate indifference. Accordingly, plaintiff cannot proceed against Schmit on a deliberate indifference claim on these facts.

Similarly, plaintiff has failed to state a deliberate indifference claim against the group of unknown "PSU staff members" who entered plaintiff's cell. Plaintiff may not rely on "[v]ague references to a group of 'defendants,' without specific allegations tying the individual defendants to the alleged unconstitutional conduct." *Grieveson v. Anderson*, 538 F.3d 763, 778 (7th Cir. 2008). Moreover, plaintiff does not expressly allege or plead facts from which the court can reasonably infer that any of these individuals knew plaintiff had even threatened to cut himself, much less that they ignored any risk of harm or even that they were in a position to prevent it. On the contrary, what plaintiff does allege is that after he had already harmed himself and lost consciousness, these defendants responded within minutes by entering his cell and seeking medical treatment. He does not even claim this care was inadequate, much less that these defendants played a role in that care. *See*

Estelle v. Gamble, 429 U.S. 97, 103-05 (1976) (inadequate medical care for prisoners violates the Eighth Amendment). Accordingly, none of plaintiff's allegations support a finding that any of these unknown PSU staff members were deliberately indifferent to a risk a self-harm or, for that matter, to the serious medical need that apparently resulted from plaintiff's self-abuse. If plaintiff unintentionally omitted allegations implicating any of these defendants, he may file a motion to amend his complaint. In doing so, plaintiff should include as an attachment a proposed amended complaint, which the court will screen as required by § 1915A. He should also be aware that undue delay in seeking an amendment may result in its denial.[4]

ORDER

IT IS ORDERED that:

1) The clerk of court shall amend the caption consistent with this order.

2) *Pro se* plaintiff Sir Jordan Cosby is GRANTED leave to proceed on claims of Eighth Amendment deliberate indifference to a risk of self-harm against defendants Jenson, Pohl and Van Buren.

3) Plaintiff is DENIED leave to proceed on deliberate indifference claims against defendants PSU Supervisor Steve Schmit and the PSU staff members. These defendants are DISMISSED.

4) 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 state defendants. Under the agreement, the Department of Justice will have 60 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.

[4] Obviously, plaintiff may need to take discovery to determine the actual name(s) of these possible defendants, but he should at least allege what specific role each played in the alleged incident, using "John Does" aliases until he is able to substitute in their actual names.

5) 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.

6) 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.

7) 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 defendants or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 15th day of May, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge