

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

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CEDRIC A. GRAY,

Plaintiff,

v.

SHERIFF OF THE RACINE COUNTY JAIL  
and CORRECTIONAL OFFICER BARRIOS,

Defendants.

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OPINION & ORDER

Case No. 19-cv-55-wmc

*Pro se* plaintiff Cedric A. Gray, who is currently incarcerated at the Wisconsin Secure Program Facility (“WSPF”), filed this lawsuit claiming that defendants, the Racine County Jail Sheriff and jail officer Barrios, violated his rights under the Eighth Amendment and Wisconsin law during his temporary stay at the jail in November of 2018. Gray’s proposed claims arise from an incident in which Barrios opened a cell door onto his arms, causing bruising and serious pain. Gray’s amended complaint is ready for screening as required by the Prisoner Litigation Reform Act. *See* 28 U.S.C. § 1915A. After considering his allegations, while Gray will be allowed to proceed against Barrios, the court is dismissing the Racine County Sheriff.

OPINION

Gray claims that the Racine County Jail does not have a policy that requires inmates to keep their arms and legs within their cells, even though the cell doors might hit inmates’

appendages if they stick them out between the cell bars.<sup>1</sup> He alleges that on November 21, 2018, Barrios noticed that Gray had stuck his arms between his cell bars and caused the cell door to open. Gray's arms were caught between the cell bars and cell door, causing severe pain. While Gray was able to free his arms, he suffered serious bruising and his arms ached for a month. He therefore seeks to proceed on an Eighth Amendment excessive force claim against both Barrios, an Eighth Amendment deliberate indifference claim against the Racine County Sheriff, and a Wisconsin negligence claim against the Racine County Sheriff.

Starting with his excessive force claim against Barrios, for a plaintiff to succeed on such a claim, he must submit evidence that the prison official acted “wantonly or, stated another way, ‘maliciously and sadistically for the very purpose of causing harm.’” *Harper v. Albert*, 400 F.3d 1052, 1065 (7th Cir. 2005) (quoting *Whitley v. Albers*, 475 U.S. 312, 320 (1986)). Relevant factors are (1) the need for the application of force; (2) the relationship between the need and the amount of force used; (3) the extent of injury inflicted; (4) the extent of threat to the safety of staff and inmates, as reasonably perceived by the responsible officials based on the facts known to them; and (5) any efforts made to temper the severity of a forceful response. *Whitley*, 475 U.S. at 321. Because prison officials must sometimes use force to maintain order, the central inquiry is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously

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<sup>1</sup> In addressing any pro se litigant's complaint, the court must read the allegations generously, resolving ambiguities and resolving inference in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes as true the allegations in plaintiff's amended complaint.

and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

Accepting Gray’s allegations as true for screening purposes, it is reasonable to infer that Barrios’ decision to open the cell door, knowing that it would hit Gray’s arms, exhibited a wholly unnecessary and excessive use of force. Accordingly, Gray will be permitted to proceed on an excessive force claim against Barrios.

However, Gray may not proceed against the Racine County Sheriff in his individual capacity on an Eighth Amendment claim related to this incident. To state such a claim in this context, a plaintiff must plead sufficient facts to allow an inference that: (1) he faced a “substantial risk of serious harm”; and (2) the official identified acted with “deliberate indifference” to that risk. *Farmer v. Brennan*, 511 U.S. 825, 838 (1994); *Brown v. Budz*, 398 F.3d 904, 909 (7th Cir. 2005). Gray has not included any allegations suggesting that the sheriff was aware that inmates were being injured by the cell doors, so there is no basis to infer that the sheriff’s deliberate indifference caused his injury.

Nor can Gray proceed against the sheriff in his or her role as a supervisor, since a supervisory defendant cannot be held liable under § 1983 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 Gray does not allege that the Racine

County Sheriff was aware that Barrios (or any other jail employee) had previously acted in a manner making it likely that he would intentionally open a cell door onto an inmate's arms, it would be unreasonable to infer that the sheriff acted with deliberate indifference in failing to prevent the injury or impose a policy requiring inmates to keep their arms and legs in their cells.

Along the same vein, Gray may not proceed against the sheriff in his or her official capacity as a policy-maker. *Sanville v. McCaughtry*, 266 F.3d 724, 732 (7th Cir. 2001) (“Official capacity suits are actions against the government entity of which the official is a part.”). To establish liability against a county, a plaintiff must show: (1) deprivation of a federal right; (2) as a result of either an express municipal policy, widespread custom, or deliberate act of a decision-maker with final policy-making authority for the county; which (3) was the proximate cause of plaintiff's injury. *Ovadal v. City of Madison*, 416 F.3d 531, 535 (7th Cir. 2005) (citing *Inco v. City of Chicago*, 286 F.3d 994, 998 (7th Cir. 2002)). While Gray's assertions suggest he believes that the *absence* of a policy prohibiting inmates from putting their arms between the cell bars is unconstitutional, he has not pled *any* facts suggesting that any supervisor at the jail (or more broadly, the county) had reason to know that jail officials purposely or recklessly were opening cell doors into inmates' appendages, thus making the policy necessary. As such, there is no basis to infer that any county officials acted with deliberate indifference in failing to implement a policy prohibiting inmates from putting their arms and legs through cell bars.

Since Gray will not be allowed to proceed on an Eighth Amendment claim against the Racine County Sheriff, the court declines to exercise supplemental jurisdiction over his

purported negligence claim against the sheriff as well. *See, e.g., Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) (affirming trial court's dismissal of plaintiff's state law claims for lack of jurisdiction after parallel federal claims had been dismissed).

## ORDER

IT IS ORDERED that:

- 1) Plaintiff Cedric Gray is GRANTED leave to proceed on an Eighth Amendment excessive force claim against defendant Barrios.
- 2) Plaintiff is DENIED leave to proceed on all of his other claims. Defendant Racine County Jail Sheriff is DISMISSED.
- 3) The clerk of court is directed prepare summons and forward a copy of this order and the amended complaint to the U.S. Marshal Services for service upon the defendant.
- 4) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to the defendant's attorney.
- 5) 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.
- 6) 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 defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 10th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge