

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

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TROY G. HAMMER,

Plaintiff,

v.

OPINION AND ORDER

20-cv-202-wmc

CHRISTOPHER BORTZ and  
CHRISTOPHER OLSON,

Defendants.

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*Pro se* plaintiff Troy G. Hammer, who was previously incarcerated at Columbia Correctional Institution (“Columbia”), filed this lawsuit pursuant to 42 U.S.C. § 1983, against two Columbia correctional officers. Hammer claims in particular that on November 6, 2018, defendant Christopher Bortz used excessive force against him, and that defendant Christopher Olson failed to protect him from Bortz’s use of force, all in violation of his Eighth Amendment rights. Hammer’s complaint is ready for screening as required by 28 U.S.C. §§ 1915(e)(2), 1915A, and he has filed a motion for assistance in recruiting counsel (dkt. #19). For the following reasons, the court will allow him to proceed against both defendants, but will deny his request for assistance in recruiting counsel without prejudice.

## ALLEGATIONS OF FACT<sup>1</sup>

On November 6, 2018, Hammer was placed in a restraint chair that included hand cuffs, ankle cuffs, chest straps, hip straps and shin straps. While Hammer adjusted his position in the chair to reduce pain caused by the position of his cuffed hands behind his back, Bortz seized Hammer's jaw, sharply pulled his head back, and held it for fifteen seconds in a position that caused Hammer pain. During this time, Bortz yelled, "stop manipulating the restraints!" (Compl. (dkt #1) ¶ 11.) Olson, a Lieutenant Supervisor at Columbia, was present during the incident and did not intervene. (*Id.* ¶ 18.)

Hammer alleges that he could not breathe well during this incident, and that he felt as though he suffered a pinched nerve or pulled muscle. Moreover, several days later, Hammer experienced headaches and muscles spasms that he believes to be caused by this incident. On November 8, 2018, Hammer had a fellow inmate submit a Health Services Request on his behalf related to these injuries. He claims this Request was not processed properly.

Hammer later injured his back through a small movement that he believes to be incapable of causing such an injury without the initial strain placed on it by Bortz on November 6. He continues to experience pain and mobility issues after physical activity.

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<sup>1</sup> In addressing any *pro se* litigant's complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

## OPINION

### I. Screening of Complaint

The court understands plaintiff to be pursuing Eighth Amendment claims against both named defendants.<sup>2</sup> First, with respect to defendant Bortz, for a plaintiff to succeed on an excessive force 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 *Wilson v. Seiter*, 501 U.S. 294, 296 (1991)). 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 the injury inflicted; (4) the extent of threat to the safety of staff and inmates, as reasonably perceived by the responsible officials based on facts known to them; and (5) any efforts made to temper the severity of a forceful response. *Whitley v. Albers*, 475 U.S. 312, 321 (1986). 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.” *Id.* at 320-21 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

Plaintiff’s allegations permit a reasonable inference that in seizing plaintiff’s head and forcefully pulling it even after plaintiff yelled out in pain, Bortz used a substantially

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<sup>2</sup> Plaintiff refers to a mishandling of a Health Services Request (Compl. (dkt #1) ¶¶ 14-15), but does not provide details on how he believes it was mishandled, nor does he name a responsible party as a defendant. Should plaintiff wish to pursue a claim related to any medical care he did or did not receive related to this incident, he will need to seek leave to amend his complaint to (1) include more details about his efforts to obtain medical attention and (2) identify as defendants the persons involved in responding to his need for medical attention. The court would screen any proposed amended complaint, as required by § 1915(e)(2).

greater degree of force than was necessary, particularly in light of the lowered threat to safety that plaintiff posed in his restrained position.

Second, as for defendant Olson, although he did not use excessive force against plaintiff, the court will allow plaintiff to proceed against him on an Eighth Amendment failure-to-protect claim. For a plaintiff to succeed on a failure-to-protect claim, he must produce evidence that (1) he faced a substantial risk or serious imminent harm; and (2) the defendant responded with deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). This requires that the defendant have actual knowledge of the risk of harm, which in turn requires that the defendant “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference.” *Id.*

Plaintiff’s allegations permit a reasonable inference that (1) Bortz placed plaintiff in a situation where he faced imminent harm; and (2) defendant Olson was aware that Bortz was using an unnecessary degree of force, had the opportunity to stop Bortz, but failed to do so. While further fact-finding might reveal that Olson was not actually aware of a serious risk to Hammer’s health or did not have a reasonable opportunity in that 15-second period of time to stop Bortz from restraining plaintiff so forcefully, at this early stage it is reasonable to infer that Olson could have stepped in to stop Bortz. Accordingly, this claim may proceed as well.

## II. Motion for Assistance in Recruiting Counsel (dkt. #19)

Finally, plaintiff requests that the court assist him in recruiting counsel. A *pro se* litigant does not have a right to counsel in a civil case, *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014), but a district court has discretion to assist *pro se* litigants in finding a lawyer to represent them. *Pruitt v. Mote*, 503 F.3d 647, 649 (7th Cir. 2007). A party who wants assistance from the court in recruiting counsel must meet certain requirements. *Santiago v. Walls*, 599 F.3d 749, 760–61 (7th Cir. 2010).

Before a district court can consider such motions, it must first find that the plaintiff has made reasonable efforts to find a lawyer on his own and that he was unsuccessful or that he was prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, a plaintiff must submit letters from at least three lawyers whom he asked to represent him in this case and who turned him down, or, if such letters do not exist, an affidavit with the names, addresses and dates when he requested their assistance. Plaintiff has not submitted any evidence to indicate that he made reasonable efforts to find a lawyer or that he was prevented from doing so, so the motion must be denied for that reason.

In any event, plaintiff's filings do not suggest that the legal and factual difficulty of this case exceeds his abilities. Plaintiff claims that he does not have the legal knowledge or resources to effectively litigate his case and that he does not have the ability to conduct discovery on his own, but nearly all *pro se* litigants are untrained in the law and face similar limitations. Moreover, plaintiff's filings indicate he *can* complete the tasks at hand. He has clearly articulated the factual bases for his claims and submitted understandable filings.

Given that his claims appear to turn on questions of fact rather than law, it appears that plaintiff is well-familiar with the most important issues of the case. Moreover, this matter soon will be scheduled for a telephonic preliminary pretrial conference, during which Magistrate Judge Stephen Crocker will provide details about how this case will proceed, and subsequently issue an order that provides further guidance that will explain how plaintiff may gather evidence to prove his claims.

Accordingly, the court is denying this motion without prejudice to plaintiff renewing it should the tasks associated with the prosecution of this case become unmanageable. If he decides to renew his motion, plaintiff should include evidence demonstrating that he first sought counsel on his own as well as specific details explaining the tasks he is unable to perform alone.

## ORDER

### IT IS ORDERED THAT:

1. Plaintiff Troy G. Hammer is GRANTED leave to proceed on an Eighth Amendment excessive force claim against defendant Bortz and an Eighth Amendment failure-to-protect claim against defendant Olson.
2. Plaintiff's motion for assistance in recruiting counsel (dkt. #19) is DENIED without prejudice.
3. 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 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff's complaint if it accepts service for the defendants.
4. 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 the defendants' 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 plaintiff's 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 claims may be dismissed for his failure to prosecute.
7. Plaintiff's motions for screening (dkt. ##18, 20, 21) are DENIED as moot.

Entered this 3rd day of November, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge