# APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 15-3077
Bruce Giles,

*Plaintiff-Appellant*,

v.

Salvador A. Godinez, Acting Director, et al.,

*Defendants-Appellees.*

Filed: January 29, 2019

Before FLAUM, MANION, and ST. EVE, Circuit Judges.

MANION, Circuit Judge. Bruce Giles is a prisoner in the custody of the Illinois Department of Corrections (the Department") who suffers from schizoaffective disorder. Giles filed this action pro se under 42 U.S.C. § 1983 against several Department officials. He alleges the defendants violated his rights under the Eighth Amendment by being deliberately indifferent to his serious medical needs, subjecting him to unconstitutional conditions of confinement, and failing to protect him from other inmates. The district court granted summary judgment to the defendants and Giles now appeals. The district court's conclusion was based largely on its holding that Giles could not establish the subjective elements of his claims because the defendants, who are all non-medical officials, appropriately relied on the judgment of medical professionals. Because we agree Giles cannot establish the defendants possessed a sufficiently culpable state of mind, we affirm.

## I. Background

### A. Factual Background

At all times relevant to this appeal, Giles was in the custody of the Department and housed in five different correctional facilities: Dixon Correctional Center ("Dixon"), Illinois River Correctional Center ("Illinois River"), Stateville Correctional Center ("Stateville"), Pontiac Correctional Center ("Pontiac"), and Lawrence Correctional Center ("Lawrence"). He suffers from schizoaffective disorder. His symptoms include anxiety, depression, auditory hallucinations, and suicidal ideation. He attempted suicide at least three times while in the Department's custody. He has at various times been prescribed psychotropic medications that help him cope with these symptoms but do not eliminate them entirely.

Giles's claims arise out of the medical treatment he received and the conditions of his confinement at multiple correctional facilities over a two-year period. Most of his complaints relate specifically to his placement in segregation.[1] The following timeline of events is compiled from Giles's allegations, his medical records, and his deposition testimony.

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[1] Although Giles's placement in segregation is at the core of his complaint, the exact duration of his periods in segregation and the nature of segregation placement at each facility are not clear from the record or Giles's allegations. As best as can be discerned, Giles was placed in segregation during two separate periods and at three different facilities: first, at Illinois River and Pontiac from March 2011 to approximately July 2011 (he was transferred to Pontiac in April), and second, at Lawrence from February 2012 until approximately November 2012.

From late June 2010 until September 2010, Giles was housed at Dixon, where he alleges he had daily access to mental health professionals and the opportunity to participate in therapeutic programs.[2] On September 22, 2010, Giles was transferred from Dixon to Illinois River. According to the health status transfer summary prepared by an official at Dixon at the time of Giles's transfer, Giles's prescription for psychotropic medications (Prozac and Depakote) had been discontinued on July 23, 2010, about two months before he left Dixon.

Giles was examined by a nurse at Illinois River on October 3, 2010, at which point he requested to see a psychologist because he wanted to get back on his medications. The nurse noted he was "upset that [he] cannot see psych today." Three days later, on October 6, Giles was transferred to Stateville due to an unrelated legal proceeding. On October 9, while Giles was at Stateville, a psychiatrist again prescribed Prozac and Depakote, less than a week after he requested the return to medication.

Giles was sent back to Illinois River on November 10, 2010. This time, his transfer summary failed to include the fact that he was receiving psychotropic medications, resulting in a lapse of medication. Giles was examined by a mental health counselor on November 22 and then by a psychiatrist on November 25. The psychiatrist again prescribed Prozac and Depakote and requested Giles's medical records from Stateville. Giles was

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[2] Giles acknowledged in his deposition that he did not avail himself of these programs, however, until he returned to Dixon after filing this suit.

examined by a medical health counselor on December 8. On December 12, a psychiatrist reviewed Giles's medical records from Stateville and noticed Giles had received Prolixin while there and his symptoms had improved, so Giles was placed back on Prolixin.

Giles was examined by a mental health counselor on ten different occasions from December 2010 until April 2011. He was also examined by a psychiatrist and attended group therapy sessions multiple times in January until he stopped showing up for the sessions in February.

Giles complained to a mental health counselor in March 2011 that he was not doing well and that he had not received his Prolixin medication for two days. The counselor wrote in his report that he addressed the medication issue with the prison pharmacy. Around this time, Giles had an altercation with another inmate at Illinois River. According to Giles's deposition testimony, the incident occurred when he was talking to himself and another inmate approached him, told him to shut up, and spit in his face. Giles pushed the inmate away. He claims the reason he was talking to himself was because he had not received his Prolixin medication, which helps control the voices in his head.

Because of the altercation, Giles was placed in segregation. According to Giles, while in segregation "you're just thrown in a cell all day with other inmates that are violent, that don't care about you." He claims he was subjected to violence from other inmates in segregation but that he never reported this to prison officials. He testified inmates in segregation were given yard time, but that he sometimes chose not to go because he did not feel safe in the yard, claiming "that is where usually everybody fights."

After being placed in segregation in March 2011, Giles attempted suicide by cutting his wrists on his bed frame. His testimony indicates his cousin had passed away around this time and that his cellmate would not let him sleep at night. He also testified his symptoms were "just getting so bad," particularly the voices in his head, even though he acknowledges he was receiving his medications at this time. The stress from these combined factors led to his suicide attempt. Giles's cellmate notified the prison staff and Giles was rescued. After this, he was placed on suicide watch and was examined by mental health professionals.

Giles was examined by a mental health counselor on April 1 and April 8, 2011. The counselor noted there was "potential for exaggeration of symptoms" and that Giles was "coherent" with "no overt distress."

Giles was again transferred from Illinois River on April 13, 2011, this time to Pontiac. He remained in segregation at Pontiac. While at Pontiac, Giles alleges he received medication and one-on-one therapy, to "try to give [him] a little hope." He felt this treatment was insufficient. He alleges he was not given his medications "about twice." A psychiatrist discontinued Giles's existing prescriptions and prescribed new psychotropic medications on April 26. Three days later, Giles was again examined by a psychiatrist who noted "there is nothing to contraindicate continued segregation placement at this time."

Giles received an extended interview with a psychiatrist on May 24, 2011. During this session, Giles stated he was "fine, except that [he had] not been getting [his] Prolixin." The psychiatrist noted Giles's mood was good; he was awake, alert, and oriented; he displayed "[n]o acute distress/agitation"; his speech was

"fluent and coherent"; and his "thoughts were organized." Giles denied having any suicidal or homicidal thoughts. Besides claiming he had not been receiving Prolixin, "[h]e made no mention of any other serious concerns." Giles was still in segregation at this time.

Giles was scheduled for another psychiatric appointment on July 5, 2011, which he did not attend, opting to go to the prison yard instead. He was evaluated by a mental health professional on July 29, who again noted "there is nothing to contraindicate continued segregation placement at this time." As best as can be discerned from the record, Giles was removed from segregation sometime during July 2011.

Giles was transferred to Lawrence in early September 2011. He was examined by mental health professionals three times in September, four times in October, twice in November, twice in December, and three times in February 2012. After one of the October examinations, the mental health professional determined Giles was having issues with his cellmate and his cell assignment was exacerbating his symptoms. As a result, Giles was assigned a new cell and cellmate the next day. Notes from his examination the following week indicate "notable improvement."

In February 2012, Giles was involved in another altercation with an inmate, which formed the basis of his original failure-to-protect claim. This altercation occurred when he accidentally bumped into the other inmate in the mess hall while talking to himself. The other inmate assumed Giles was talking to him and struck him in retaliation. Giles was rendered unconscious by the attack. Giles testified in his deposition he had never had trouble with this inmate

before and never told the facility staff he felt he was in danger, but that "it happened because of my symptoms. I was there, and [the other inmate] just happened to be aggressive." During the investigation of the altercation, when he was asked (apparently by prison officials) if he was "guilty," Giles alleges he simply responded he was. As a result, both Giles and the other inmate were placed in segregation. Giles apparently stayed in segregation from February until November 2012.

Giles was examined by mental health professionals nine more times during the period spanning from March to July 2012. During this time, he expressed his unhappiness at Lawrence, his unhappiness with being in segregation, and the anxiety he felt regarding the possibility of future altercations. Giles reported difficulties with cellmates and frequently requested reassignment. The mental health professionals noted Giles lacked focus during treatment sessions and often did not complete assigned therapy homework.

Throughout the two years at issue, Giles filed at least nineteen grievances. His complaints related to insufficient medical treatment, delays or interruptions in receiving medication, unconstitutional conditions of confinement, lack of adequate suicide prevention, vermin infestations, his unhappiness in segregation, and other issues. He alleges all these grievances were either ignored outright or, if reviewed, his concerns were not addressed. He testified in his deposition, however, that he did not know whether the grievances were reviewed or investigated. We know from the record that at least three of these grievances (filed in March 2012, April 2012, and July 2012) were subjected to "Emergency Review" by Marc Hodge (the warden at Lawrence). The record also includes responses to many

of Giles's appeals of his grievances alleging that he was not receiving his medication, that segregation placement was not conducive to his mental health, and that the facilities lacked proper mental health programs. These appeals were all denied, as the Department's Administrative Review Board (the "ARB") determined, "[b]ased on a total review of all available information," that the complaints were without merit.

Giles was eventually transferred back to Dixon in early 2014.

### B. District Court Proceedings

Giles filed this suit pro se on September 4, 2012. He named several defendants, nine of which remain in the case at this stage: S.A. Godinez (the Department's acting director during the relevant time period), Richard Birkey (the warden at Illinois River), Leonta Jackson (the assistant warden at Illinois River), Ron Zessin (the clinical services supervisor at Illinois River), Randy Pfister (the warden at Pontiac), Michael Lemke (the assistant warden at Pontiac), Marc Hodge (the warden at Lawrence), Mark Storm (the assistant warden at Lawrence), and Randy Stevenson (the clinical services supervisor at Lawrence). [3] Giles asserted three claims under the Eighth Amendment, seeking to hold the defendants liable for these alleged constitutional violations pursuant to 42 U.S.C. § 1983. First, he asserted a claim of deliberate indifference to serious medical needs based on his allegations of inadequate treatment and delays in providing

[3] Five other defendants, also Department officials, were dismissed by the district court in November 2012.

medication at Illinois River, Pontiac, and Lawrence. Second, he asserted a conditions-of-confinement claim based on his allegations of vermin infestations and unsanitary conditions while in segregation at Pontiac and Lawrence. Third, he asserted a failure-to-protect claim based on the February 2012 altercation.

The case was referred to a U.S. magistrate judge in late 2012, with Giles's consent. The defendants moved for summary judgment in June 2014. The magistrate judge issued a Report & Recommendation (R&R) and recommended granting summary judgment on the ground that Giles failed to show deliberate indifference. After a *de novo* review of the R&R and Giles's objections thereto, the district court adopted the R&R in its entirety and granted summary judgment to the defendants.

Throughout the district court proceedings, Giles filed multiple motions to appoint counsel. He first filed such a motion on September 4, 2012. The magistrate judge denied the motion because Giles had not demonstrated that he had attempted to find counsel on his own. On December 17, Giles filed a motion to reconsider his motion to appoint counsel after attempting unsuccessfully to find an attorney. The magistrate judge again denied the motion, holding that the issues in the case were not factually complex because discovery had been limited at that time to only the issue of exhaustion of administrative remedies. The court held that Giles was competent to litigate on his own at that stage. Giles filed another motion to appoint counsel on July 2, 2013. The court reaffirmed its previous decision that Giles appeared competent to litigate the case at the current stage and stated that the issue of appointing counsel

would not be reconsidered until after the resolution of the administrative remedies issue.

In August 2013, after the defendants' deadline to raise a failure to exhaust administrative remedies defense had expired, Giles once again moved the court to appoint counsel for him. The magistrate judge construed the motion as a motion for recruitment of counsel and granted it, noting that the court has no authority to appoint counsel in § 1983 cases but can seek to recruit a volunteer attorney. *See Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013). The district court circulated a request for representation to the court's list of "approximately 50 licensed and registered attorneys that have indicated an interest in representing indigent litigants in this district." However, no attorneys were willing and available to represent Giles immediately.

Giles moved in February 2014 for additional time to seek counsel. Giles argued he needed legal assistance to "prepare documents, for dispositive motions, and discovery." The magistrate judge denied the motion because Giles had not specified a deadline for the extension request, but he stated he would continue to seek a volunteer to represent Giles. Giles filed another motion to recruit counsel in May 2014. The magistrate judge denied the motion as moot, having already granted the earlier motion to recruit, but once again solicited volunteers from the pro bono list. Giles moved for recruitment of counsel again in August 2014 while summary judgment was pending. The magistrate judge again explained that the motion to recruit counsel had previously been granted and that the court had done all it could to solicit a volunteer. Giles's case was published to the list of volunteers a third time. The magistrate judge encouraged Giles to continue litigating the case to

the best of his ability. Finally, Giles filed a motion to appoint counsel once again in December 2014, which the district court denied as moot in January 2015, stating that it had already granted Giles's motion to recruit and that Giles would be notified if an attorney volunteered to take the case.

Giles also moved multiple times, beginning on October 16, 2014, to appoint an expert. The magistrate judge denied these motions, stating "[t]he discovery period is closed, but the plaintiff may later seek to appoint an expert for trial if the [defendants'] motion for summary judgment is denied."

Giles now appeals the district court's grant of summary judgment on his claim for deliberate indifference to serious medical needs and his conditions-of-confinement claim, as well as the district court's actions regarding his motions to recruit counsel and appoint an expert.

## II. Discussion

We review the district court's grant of summary judgment *de novo*. *Knopick v. Jayco, Inc.*, 895 F.3d 525, 528 (7th Cir. 2018). A district court properly grants summary judgment where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Valenti v. Lawson*, 889 F.3d 427, 429 (7th Cir. 2018). All justifiable inferences are drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The non-movant must, however, present specific facts establishing a material issue for trial, and any inferences must rely on more than mere speculation or conjecture. *Aguilar v. Gaston-Camara*, 861 F.3d 626, 630–31 (7th Cir. 2017).

The Eighth Amendment, applicable to the States through the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments." U.S. CONST. amend. VIII; *Estelle v. Gamble*, 429 U.S. 97, 101 (1976). The Supreme Court has interpreted the Eighth Amendment to prohibit any punishments "which, although not physically barbarous, 'involve the unnecessary and wanton infliction of pain.'" *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)). Thus, the Eighth Amendment gives rise to constitutional claims by inmates alleging that the conditions of their confinement violate this prohibition by imposing "the wanton and unnecessary infliction of pain." *See Rhodes*, 452 U.S. at 347. The Supreme Court has further established that prison officials impose wanton and unnecessary infliction of pain when they are deliberately indifferent to an inmate's serious medical needs. *Estelle*, 429 U.S. at 104. Giles here appeals summary judgment on both a claim of deliberate indifference to his serious medical needs as well as a conditions-of-confinement claim. We discuss each in turn.

### A. Deliberate Indifference to Serious Medical Needs

To establish an Eighth Amendment claim for deliberate indifference to serious medical needs, the plaintiff must show two elements: one objective and one subjective. *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016). "[T]he plaintiff must prove that he suffered from '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Id.* (quoting *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)). "[D]eliberate means more than negligent," though "something less than purposeful." *Duckworth*,

532 F.3d at 679. We have described this subjective element as "'a sufficiently culpable state of mind,' something akin to recklessness." *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011) (quoting *Johnson v. Snyder*, 444 F.3d 579, 585 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965, 967 n.1 (7th Cir. 2013)). Although the inmate must demonstrate deliberate indifference, he "is not required to show that he was literally ignored." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) (quoting *Sherrod v. Lingle*, 223 F.3d 605, 611 (7th Cir. 2000)).

Regarding the objective element of his claim, Giles has clearly met his burden. His schizoaffective disorder diagnosis, his symptoms, and his multiple prescriptions for psychotropic medications firmly establish that he suffered from an objectively serious medical condition. *See id.* ("A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention."). Giles's claim hinges, therefore, on whether he has shown the defendants possessed the "sufficiently culpable state of mind" necessary to establish the subjective element of deliberate indifference. The district court held that Giles failed to meet this burden. We agree.

Giles cannot establish the subjective element of his claim because the defendants are all non-medical officials who reasonably relied on the judgment of medical professionals. We have long recognized that the division of labor within a prison necessitates that non-medical officials may reasonably defer to the judgment of medical professionals regarding inmate treatment. "If a prisoner is under the care of medical experts … a non-medical prison official will generally be justified in

believing that the prisoner is in capable hands." *Id.* at 656 (quoting *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004)). As the Third Circuit has held, "absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official … will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference." *Spruill*, 372 F.3d at 236.

In *Hayes v. Snyder*, 546 F.3d 516, 527–28 (7th Cir. 2008), we affirmed summary judgment for non-medical prison officials who relied on the professional judgment of prison medical staff. Like Giles, the inmate in *Hayes* sent several letters and filed multiple grievances alleging he was receiving inadequate treatment for his objectively serious medical condition. *Id.* at 526. Although the non-medical officials did not ignore the inmate's grievances entirely, they did not investigate further than the medical staff's reports and summaries, and otherwise simply referred the complaints to the medical staff. *Id.* at 527. We held that the non-medical officials did not have "any duty to do more than they did, in light of their knowledge of the situation." *Id.* They "were entitled to rely on the professional judgment of medical prison officials" and "nothing in [the medical] reports made it obvious that [the inmate] might not be receiving adequate care." *Id.* at 527–28.

A review of the record demonstrates that throughout his various stints at Illinois River, Stateville, Pontiac, and Lawrence, Giles was receiving regular medical attention from psychologists, psychiatrists, and mental health professionals. Although the record does not contain detailed information about what the grievance procedures were at each facility, it does contain

evidence that several of his grievances were subjected to emergency review. Furthermore, Giles's appeals were reviewed by the ARB, which found his complaints to be without merit upon investigation. Giles has not presented evidence that his grievances were ignored or mishandled. Nor was there an indication from his medical records that he was not receiving adequate care. In short, the non-medical officials relied on the medical professionals to provide proper treatment, and there was nothing to give notice to the officials of a need to intervene.

Giles asserts the defendants were deliberately indifferent by allowing him to "go on and off of his medication many times" despite knowing his health condition required continuous treatment. However, the record does not support this assertion. Giles's medications were discontinued in July 2010 while still at Dixon pursuant to a decision made by medical professionals. Several weeks later, after being transferred first to Illinois River and then to Stateville, Giles was placed back on medications soon after he requested them. Although there were other brief delays in his receipt of medication, when he brought these to the medical professionals' attention his concerns were addressed, or else it was determined after a review of all available information that he was properly receiving his medication as prescribed. Even during one of the periods where Giles alleged he was not receiving his medication, a psychiatrist reported after an extended interview that Giles's demeanor was good, he was coherent and alert, and he displayed no acute distress or agitation. Such reports from the medical professionals charged with Giles's care defy the conclusion that the non-medical defendants knew of and

disregarded an excessive risk to Giles's health and safety.

The most serious lapse in treatment was the two-week period in November 2010 when he was transferred back to Illinois River from Stateville. This lapse was caused by a failure to include his current prescriptions on his transfer summary. While this was certainly a concerning oversight, it does not meet the standard of deliberate indifference: a knowing disregard of an excessive risk to Giles's health and safety. As we have noted before, "deliberate means more than negligent." *Duckworth*, 532 F.3d at 679. Giles's medication was re-prescribed as soon as he was examined by a psychologist at Illinois River, who requested and reviewed Giles's medical records from Stateville.

No reasonable jury could find that the defendants knew of and disregarded an excessive risk to Giles's health and safety, and thus summary judgment on this claim was appropriate.

### B. Conditions of Confinement

Giles also appeals the grant of summary judgment on his conditions-of-confinement claim. Although the complaint focused on specific conditions to which Giles was subjected while in segregation (such as vermin infestations, filthiness, and lengthy periods of isolation), on appeal Giles has reframed the violation as being the combined effect that these conditions had on his mental health. [4] He asserts his placement in segregation

[4] Giles's counsel explained at oral argument "what's happening to is mental health while he's in segregation is the conditions of confinement violation."

subjected him to conditions which exacerbated his symptoms, or which were more difficult for him to cope with due to his symptoms. He argues that even though segregation placement and the conditions of his confinement may not have been cruel and unusual in the case of an ordinary inmate, they amounted to cruel and unusual treatment in his case given their combined effect on his illness.

The Eighth Amendment prohibits the States from subjecting prisoners to conditions of confinement amounting to cruel and unusual punishment. *Rhodes*, 452 U.S. at 345–47. According to the Supreme Court, however, "extreme deprivations are required to make out a conditions-of-confinement claim." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Whether conditions of confinement are cruel and unusual must be judged in accordance with contemporary standards of decency. *Id.* at 8; *Rhodes*, 452 U.S. at 346. If under contemporary standards the conditions cannot be said to be cruel and unusual, then they are not unconstitutional, and "[t]o the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society." *Rhodes*, 452 U.S. at 347.

As with a claim for deliberate indifference to serious medical needs, a conditions-of-confinement claim includes an objective and a subjective component. *Isby v. Brown*, 856 F.3d 508, 521 (7th Cir. 2017). The plaintiff must first establish "an objective showing that the conditions are sufficiently serious—*i.e.*, that they deny the inmate 'the minimal civilized measure of life's necessities,' creating an excessive risk to the inmate's health and safety." *Id.* (quoting *Rhodes*, 452 U.S. at 347) (internal citations omitted). The plaintiff must next

establish "a subjective showing of a defendant's culpable state of mind." *Id.* Once again, the state of mind necessary to establish liability is deliberate indifference to the inmate's health or safety. *Estate of Novack ex rel. Turbin v. Cty. of Wood*, 226 F.3d 525, 529 (7th Cir. 2000).

Giles attempts to satisfy the objective element by arguing that placing a mentally ill inmate in segregation—under conditions that exacerbate his symptoms or with which he has difficulty coping due to his symptoms—is an objectively serious condition creating an excessive risk to his health and safety. We have indeed recognized that prolonged segregated confinement may constitute an Eighth Amendment violation in some instances. *See Isby*, 856 F.3d at 521 (quoting *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 666 (7th Cir. 2012)). We have also held that the aggregate effect of a multitude of individual conditions may constitute a violation even if each individual condition could not establish a violation standing on its own. *Id.* at 522. However, this only occurs when the conditions "have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise." *Id.* (quoting *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)). The core issue is whether the conditions deprived the plaintiff of a "minimal civilized measure of life's necessities." *Rice*, 675 F.3d at 664–65.

While we do not deny that Giles experienced harsh conditions in segregation, the record does not support a finding that he was deprived of the minimal civilized measure of life's necessities, even considering the effects on his mental condition. He was regularly evaluated by mental health professionals at all facilities,

and they repeatedly determined that his condition did not contraindicate continued segregation. And on the occasion in November 2011 when a mental health professional determined that his mental condition was being exacerbated by his cell assignment, he was reassigned and moved the next day, checked on less than a week later, and was found to have notably improved. Giles has therefore not established the objective element of his claim.

Even if Giles could establish an objectively serious condition, he ultimately fails to establish the necessary subjective component of his claim: the defendants' culpable state of mind. Once again, the defendants relied on the judgment of the medical professionals into whose care Giles was entrusted. No reasonable jury could find that the defendants consciously disregarded an excessive risk to Giles's health by keeping him in segregation when the mental health professionals continually reported it was appropriate to do so.

Since Giles failed to establish both the objective and subjective elements of his claim, summary judgment in favor of the defendants was proper.

### C. Motions to Recruit Counsel and Appoint Expert

The final issue on appeal concerns the district court's handling of Giles's motions to appoint or recruit counsel and to appoint an expert. We review the district court's decisions on these motions for abuse of discretion. *Pruitt v. Mote*, 503 F.3d 647, 649, 658 (7th Cir. 2007) (en banc) (reviewing a decision on a motion to recruit counsel for abuse of discretion); *Ledford v. Sullivan*, 105 F.3d 354, 358 (7th Cir. 1997) (holding that a decision on a motion for appointment of an expert witness is reviewed for abuse of discretion). In reviewing for abuse of discretion, we do not substitute our own judgment

for the district court's; rather, the "decision must strike us as fundamentally wrong for an abuse of discretion to occur." *Ladien v. Astrachan*, 128 F.3d 1051, 1056 (7th Cir. 1997).

We note at the outset of our discussion that "[t]here is no right to court-appointed counsel in federal civil litigation." *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014). However, the district court does have the discretion to recruit a volunteer to represent a plaintiff who cannot otherwise afford counsel. *Navejar*, 718 F.3d at 696. The court "must rely on the generosity of lawyers to volunteer their time and skill on behalf of indigent civil parties." *Wilborn v. Ealey*, 881 F.3d 998, 1008 (7th Cir. 2018).

Evaluating whether to recruit counsel involves a two-step process. First, the court must determine if the plaintiff made a reasonable attempt to secure counsel on his own. *Navejar*, 718 F.3d at 696. Next, the court must examine "whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it." *Id.* (quoting *Pruitt*, 503 F.3d at 655). Even where the court decides to recruit a volunteer, however, it does not have "an indefinite commitment to search until a volunteer is found." *Wilborn*, 881 F.3d at 1008.

The insufficient number of volunteer attorneys in some of our districts limits courts' ability to locate representation for indigents. *See James v. Eli*, 889 F.3d 320, 330–31 (7th Cir. 2018). This case presents the question of what a court should do in the event a court determines that the case's complexity appears to exceed the plaintiff's capacity to litigate his claims and the court exercises discretion to seek a volunteer attorney but is unable to find one.

We considered a similar question in *Wilborn v. Ealey*, 881 F.3d 998 (7th Cir. 2018). In that case, the plaintiff filed multiple motions to recruit counsel. The district court eventually granted one such motion and spent several months searching.

After contacting over four hundred attorneys, the court identified a volunteer. This success was short-lived, though. The attorney had a scheduling conflict, which ultimately led the court to grant his motion to withdraw. Despite this change, the plaintiff did not file another motion to recruit counsel. The court offered to postpone the trial, but the plaintiff declined the court's offer. As a result, the court allowed the plaintiff to proceed to trial pro se. Based on those facts, we decided that the court's efforts were "more than enough to satisfy any duty to the indigent plaintiff," and we held that the court did not abuse its discretion in allowing the plaintiff to try his case pro se. *Id.* at 1008.

Here too, we conclude that the district court fulfilled its obligation to Giles by circulating a request for representation to the court's list of approximately fifty attorneys on three separate occasions over the course of one year. Yet it is somewhat concerning that at some point the court determined further searching would be futile and, without communicating that update to Giles, decided it was appropriate to resolve the pending motion for summary judgment.

Acknowledging that "[t]here are limits to what a court must do after deciding to recruit counsel," *id.*, in cases such as this—where the complexities of litigating are high, having counsel is increasingly important, and a district court has concluded that it is unable to locate a volunteer attorney—it would be advisable for a judge to communicate with the plaintiff and consider offering a

reasonable continuance before proceeding to rule on a dispositive motion. The additional time after a court has exhausted its search efforts might afford a limited opportunity for indigent litigants to seek counsel on their own, or at a minimum, conduct some preliminary discovery.

The district court also denied Giles's motion to appoint an expert witness, holding that an expert was not necessary before summary judgment but stating that Giles could move to appoint an expert for trial if his case survived summary judgment. A court may, in its discretion, appoint an expert witness where the expert's "specialized knowledge will assist the trier-of-fact to understand the evidence or decide a fact in issue." *Ledford*, 105 F.3d at 358–59. The district court determined Giles's claims failed as a matter of law to show the defendants knowingly disregarded a substantial risk of serious harm to him. This decision did not hinge on specialized knowledge or fact-finding. Instead, the court recognized Giles had received consistent treatment from medical professionals and the defendants had relied on the medical judgment of those professionals. The grant of summary judgment was based on Giles's failure to establish the defendants' sufficiently culpable state of mind, not on a technical analysis of the medical treatment he received or the sufficiency of that treatment. Thus, the district court acted fully within its discretion by denying the motion to appoint an expert witness at that stage of litigation.

## III. Conclusion

Prison is, by its very nature, an unpleasant place to be, and we have no doubt that Giles's objectively serious condition and symptoms contributed to his overall discomfort. The dispositive defect of Giles's case,

however, is that the defendants against whom he has filed this action are non-medical officials who were entitled by law to rely on the judgment of the medical professionals under whose care Giles was placed. Section 1983 does not create a system of vicarious liability. The defendants cannot be held liable unless they were aware of facts from which a reasonable inference could be drawn that Giles was subjected to a substantial risk of serious harm, drew such an inference, and yet did not intervene. Based on this record, we hold that Giles has failed to make that showing, and therefore has failed as a matter of law to establish deliberate indifference. We AFFIRM the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: November 2, 2012

## MEMORANDUM AND ORDER

J. Phil Gilbert, District Judge:

Plaintiff, currently incarcerated at Lawrence Correctional Center ("Lawrence"), has brought this pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants were deliberately indifferent to his serious mental health condition during his confinement in three different prisons. In addition, he was subjected to unsanitary and inhumane conditions of confinement, was attacked by a fellow inmate, and his grievances were ignored.

More specifically, Plaintiff claims that after his conviction, he was initially housed at Dixon Correctional Center ("Dixon"), where he received satisfactory treatment for his serious mental illness (Doc. 1, pp. 6-7). His living area was under constant supervision by officers trained in dealing with mentally ill prisoners, and by mental health specialists; he received daily counseling, regular psychotropic prescription medications, and had access to other therapy. However, in September 2010, he was transferred to Illinois River Correctional Center

("IRCC"), in retaliation for having filed grievances while in Dixon (Doc. 1, p. 7).

At IRCC, Plaintiff received no therapeutic services, did not regularly receive his prescription medications (for example, none were provided for two weeks after his transfer), and was housed in the general population together with non-mentally ill inmates who threatened him with violence. He contends that his status as a mentally ill inmate made him a target for threats and potential attacks. As a result of living under these conditions, his symptoms, including hearing negative voices, anger, paranoia, depression, poor sleep, anxiety, agitation, and headaches, became worse. During a brief stay at Stateville Correctional Center ("Stateville") while on a court writ, he became suicidal. Staff there restored his medications and recommended he be returned to Dixon because of his mental condition (Doc. 1, p. 8). Instead, he was returned to IRCC, where his medications were again denied until he finally saw a nurse (Doc. 1, p. 10). Plaintiff's grievances over the transfer and lack of treatment were ignored. On March 4, 2011, another inmate threatened to kill Plaintiff and spit in his face. Plaintiff pushed the other inmate, and Plaintiff was then taken to segregation. His mental state deteriorated and he attempted suicide, but his cellmate intervened to stop him. He was kept in segregation for a time, then was transferred to Pontiac Correctional Center ("Pontiac") (Doc. 1, p. 12).

At Pontiac, the pattern of failure to treat Plaintiff's mental illness continued. He did not consistently receive his prescription medications, had no therapy, had no monitoring despite his documented suicidal history, and was housed in a cell where mice and insects "were allowed to run freely" (Doc. 1, p. 13). Under these conditions, Plaintiff's psychological and physical symptoms

worsened (Doc. 1, p. 14). In September 2011, Plaintiff was transferred to Lawrence.

Plaintiff's mental health treatment at Lawrence was similarly inadequate. He might receive one-on-one counseling once every four to five weeks if he was "lucky" (Doc. 1, p. 15). He did not consistently receive his medications, and experienced "discrimination" by officers who were not trained in dealing with mentally ill prisoners, and by other inmates. In February 2012, he was attacked and physically injured by another inmate and was sent to segregation (Doc. 1, pp. 16-17). His mental condition deteriorated, and he again attempted suicide in July 2012. Again, his cellmate intervened as there was no monitoring by staff, despite Plaintiff's known history of suicidal tendencies. Plaintiff also complains that at Lawrence, he has been denied privileges that he enjoyed while at Dixon, including access to the day-room twice a day, daily shower, telephone, library, yard, and gym privileges, non-timed toilets, and prison employment (Doc. 1, pp. 15, 24). Even worse, his housing area at Lawrence is infested with mice, roaches, and insects, which have invaded Plaintiff's property boxes and damaged his belongings (Doc. 1, p. 28).

Under 28 U.S.C. § 1915A, the Court is required to conduct a prompt threshold review of the complaint. Accepting Plaintiff's allegations as true, the Court finds that Plaintiff has articulated a colorable federal cause of action against Defendants Godinez, Birkley, Jackson, Zessin, Pfister, Lemke, Hodges, Storm, and Stevenson, for a continuing pattern, practice, and policy of deliberate indifference to Plaintiff's serious mental health needs during his incarceration at IRCC, Pontiac, and Lawrence (Count 1); against Defendants Pfister, Lemke, Hodges, Storm, and Stevenson for failing to

remedy the vermin infestation in Plaintiff's cell at Pontiac and Lawrence (Count 2); and against Defendants Hodges, Storm, and Stevenson for failure to protect Plaintiff from the February 2012 inmate attack (Count 3).

However, Plaintiff fails to state a constitutional claim for the failure to provide him with daily access to the yard, gym, showers, and other amenities (Count 4), or for prison officials' failure to respond to his grievances (Count 5), for the reasons to follow. Additionally, although Plaintiff may have a viable retaliation claim (Count 6) against the official who allegedly transferred him away from Dixon because he filed grievances, the complaint does not identify who committed the act of retaliation, and thus fails to state a claim. Without more information, the Court cannot determine whether the retaliation claim is viable, and if so, whether it should remain in the present action or be severed into a separate case. Plaintiff shall have an opportunity to submit an amended complaint if he wishes to further pursue the claims in Count 4 and Count 6.

As to Count 4, Plaintiff does not have a claim for unconstitutional conditions of confinement merely because the more frequent access to the yard, day-room, showers, library, and other privileges that he enjoyed at Dixon was not available at the other prisons where he has been confined. Only objectively serious deprivations of basic human needs like food, medical care, sanitation, and physical safety will trigger an Eighth Amendment claim. *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); *see also James v. Milwaukee Cnty.*, 956 F.2d 696, 699 (7th Cir. 1992). For example, courts have held that short periods of exercise denial do not violate the Constitution. *See Harris v. Fleming*, 839 F.2d 1232, 1236 (7th Cir. 1988) (28-day denial not unconstitutional); *Phillips v.*

*Norris*, 320 F.3d 844 (8th Cir. 2003) (37 days in segregation without exercise "is perhaps pushing the outer limits of acceptable restrictions" but does not create atypical and substantial hardship); *Vinson v. Texas Bd. of Corr.*, 901 F.2d 474, 475 (5th Cir. 1990) (occasional denial of recreation claims were frivolous). Here, Plaintiff has alleged only that he has not been allowed to visit the yard or gym as often as he could while in Dixon. He has not claimed that he was deprived of the opportunity to exercise for any significant length of time, let alone long enough to rise to the level of a constitutional deprivation.

Likewise, Plaintiff has not claimed that the lack of a daily shower, general library access, telephone, or prison employment has caused him any harm of constitutional dimension. Therefore, the conditions claims in Count 4 shall be dismissed without prejudice. However, if facts exist to support an unconstitutional denial of exercise, Plaintiff may include those allegations in an amended complaint, which must be filed within 35 days. If an amended complaint is filed that fails to state a claim on this point, or if Plaintiff does not submit an amended complaint, the dismissal of Count 4 shall become a dismissal with prejudice. The amended complaint shall be subject to review pursuant to § 1915A.

The Defendants' failure to respond to Plaintiff's grievances (Count 5), in and of itself, does not amount to a constitutional claim. "[A] state's inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause." *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1995). The Constitution requires no procedure at all, and the failure of state prison officials to follow their own procedures does not, of itself, violate the Constitution. *Maust v. Headley*, 959 F.2d 644, 648 (7th Cir. 1992); *Shango v. Jurich*, 681 F.2d

1091, 1100-01 (7th Cir. 1982). Count 5 shall therefore be dismissed with prejudice. However, the substantive issue of whether the Defendants violated Plaintiff's constitutional rights (as alleged in his grievances) shall be addressed in the surviving Counts 1, 2, and 3.

Although Plaintiff alleges (Count 6) that he was transferred away from Dixon in September 2010 in retaliation for having filed grievances there, he never identifies any Defendant who allegedly took that retaliatory action (Doc. 1, pp. 6-7). He has not stated any other claim against any Dixon officials, and they shall be dismissed from the action. If Plaintiff wishes to pursue this retaliation claim, he must file an amended complaint within 35 days, stating the factual basis for this claim and identifying the responsible party or parties. Because the claim arose in the Northern District of Illinois, where Dixon is located, it may be necessary for the retaliation count to be severed from this action and transferred to the Northern District, if the amended complaint sufficiently states a claim. As noted above, if no amended complaint is submitted or if it fails to state a retaliation claim, the dismissal of Count 6 shall become a dismissal with prejudice.

Finally, Defendants Chandler, Dusing, Callahan, and Funk shall be dismissed from the action without prejudice. Plaintiff has made no actionable allegations of wrongdoing against any of these Defendants. Defendant Taylor, the former acting director of the IDOC, shall be dismissed with prejudice. The current IDOC Director, Defendant Godinez, remains in the action at this time.

**Pending motions**

Plaintiff's motion for appointment of counsel (Doc. 3) shall be referred to United States Magistrate Judge Philip M. Frazier for further consideration.

The motion for service of process at government expense (Doc. 4) is GRANTED IN PART. Plaintiff has paid the filing fee for this action in full, and the Clerk shall be directed below to serve the parties who remain in the action.

Plaintiff's motion for extension of time to pay the filing fee (Doc. 8) is DENIED AS MOOT. The filing fee payment was received timely.

**Disposition**

IT IS HEREBY ORDERED that COUNT 5 is DISMISSED with prejudice for failure to state a claim upon which relief may be granted. COUNTS 4 and 6 are also DISMISSED, but the dismissal is without prejudice at this time. Plaintiff may submit an amended complaint as outlined below if he wishes to pursue these claims further.

DEFENDANT TAYLOR is DISMISSED from the action with prejudice. DEFENDANTS CHANDLER, DUSING, CALLAHAN, and FUNK are DISMISSED from the action without prejudice.

IT IS FURTHER ORDERED that, should he wish to proceed on his claims in COUNT 4 (deprivation of exercise) and/or COUNT 6 (retaliatory transfer from Dixon), Plaintiff shall file his First Amended Complaint, stating any facts which may exist to support these claims and naming the individual Defendants directly responsible for the alleged deprivations, within 35 days of the entry of this order (on or before December 6, 2012). An amended complaint supersedes and replaces the original complaint, rendering the original complaint void. *See Flannery v. Recording Indus. Ass'n of Am.*, 354 F.3d 632, 638 n.1 (7th Cir. 2004). The Court will not accept piecemeal amendments to the original complaint. Thus, the First Amended Complaint must stand on its own, and in addition to the restated claims in Count 4

and/or Count 6, must contain the allegations in Counts 1, 2, and 3, which shall receive further review as determined above. Should the First Amended Complaint not conform to these requirements, it shall be stricken. The First Amended Complaint is subject to review pursuant to 28 U.S.C. § 1915A. Plaintiff must also re-file any exhibits he wishes the Court to consider along with the First Amended Complaint. Failure to file an amended complaint shall result in the dismissal of Counts 4 and 6 becoming a dismissal with prejudice. Review of Counts 1, 2, and 3 shall proceed whether or not Plaintiff submits an amended complaint.

In order to assist Plaintiff in preparing his amended complaint, the Clerk is DIRECTED to mail Plaintiff a blank civil rights complaint form.

The Clerk is DIRECTED to (1) issue summons to Defendants GODINEZ, BIRKLEY, JACKSON, ZESSIN, PFISTER, LEMKE, HODGES, STORM, and STEVENSON, (2) prepare, on Plaintiff's behalf, a form USM-285 for each Defendant, and (3) deliver service packets for each Defendant, consisting of the completed summons, a USM-285 form, a copy of the complaint, and a copy of this Memorandum and Order to the United States Marshal Service. The United States Marshal SHALL, pursuant to Federal Rule of Civil Procedure 4, personally serve upon each Defendant the summons, a copy of the complaint, and a copy of this Memorandum and Order. All costs of service shall be advanced by the United States, and the Clerk shall provide all necessary materials and copies to the United States Marshal Service.

Plaintiff shall serve upon Defendants (or upon defense counsel once an appearance is entered), a copy of every pleading or other document submitted for consideration by the Court. Plaintiff shall include with the

original paper to be filed a certificate stating the date on which a true and correct copy of the document was served on Defendants or counsel. Any paper received by a district judge or magistrate judge that has not been filed with the Clerk or that fails to include a certificate of service will be disregarded by the Court.

Defendants are ORDERED to timely file an appropriate responsive pleading to the complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is REFERRED to United States Magistrate Judge Philip M. Frazier for further pre-trial proceedings, which shall include a determination on the pending motion for appointment of counsel (Doc. 3).

Further, this entire matter is REFERRED to United States Magistrate Judge Frazier for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), should all the parties consent to such a referral. If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs.

Finally, Plaintiff is ADVISED that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than 7 days after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. See FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: November 1, 2012

J. Phil Gilbert
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: November 15, 2012

**TEXT ORDER**

ORDER denying [3] Motion to Appoint Counsel.

When presented with a request to appoint counsel, the Court must make the following inquiries: (1) has the... plaintiff made a reasonable attempt to obtain counsel or effectively been precluded from doing so and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007). Plaintiff has not supported his assertion that he attempted to find counsel on his own so the (Doc. 3) motion will be denied. If Plaintiff refiles a motion to appoint counsel in the future, he should support his assertion that he attempted to find counsel on his own by attaching rejection letters from the law firms he purports to have contacted. If letters are not available, he may support his assertion with an affidavit.

Signed by Magistrate Judge Philip M. Frazier on 11/15/2012.

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: February 4, 2013

**ORDER**

FRAZIER, Magistrate Judge:

Before the Court is Plaintiff's motion for appointment of counsel (Doc. 29). For the following reasons, Plaintiff's (Doc. 29) motion for appointment of counsel is denied.

There is no constitutional or statutory right to appointment of counsel in federal civil cases. *Romanelli v. Suliene*, 615 F.3d 847, 851 (7th Cir. 2010); *Santiago v. Walls*, 599 F.3d 749, 760-61 (7th Cir. 2010), *Caruth v. Pinkney*, 683 F.2d 1044, 1048 (7th Cir. 1982). However, the Court may, in an appropriate case, exercise its discretion to recruit an attorney to represent a person who is unable to afford counsel. 28 U.S.C. § 1915(e)(1); *Mallard v. United States District Court*, 109 S.Ct. 1814 (1989); *Farmer v. Haas*, 990 F.2d 319, 323 (7th Cir. 1993). When presented with a request to appoint counsel, the Court must make the following inquiries: "(1) has the ... plaintiff made a reasonable attempt to obtain counsel or effectively been precluded from doing so and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself." *Pruitt v. Mote*,

503 F.3d 647, 654-55 (7th Cir. 2007); *Santiago v. Walls*, 599 F.3d 749 (7th Cir. 2010). With regard to the first step of the inquiry, Plaintiff has demonstrated that he has attempted to find counsel, but attorneys are unwilling to take his case due to Plaintiff's inability to pay legal fees. The Court finds that Plaintiff has satisfied step one of the inquiry.

With regard to the second step, "the difficulty of the case is considered against the plaintiff's litigation capabilities, and those capabilities are examined in light of the challenges specific to the case at hand." *Pruitt*, 503 F.3d at 654-55.; *see also Santiago*, 599 F.3d at 762-64. At this point in time, it is still difficult for the Court to assess this factor. See *Romanelli*, 615 F.3d at 852 (noting infancy of case makes it impossible to make accurate determination of pro se litigant's ability to litigate case). However, it does not appear that the factual and legal issues in this case are so complex that the Court will find that the second step of the inquiry is satisfied at this time.

While constitutional torts never lack some degree of legal complexity, Plaintiff's claim does not appear to be factually complex. Plaintiff's case has been simplified by the Court. The Court has recently screened the complaint and found Plaintiff stated claims for violations of the right to be free from cruel and unusual punishment. See Doc. 10. The Court has sent service of process to the Defendants free of charge to Plaintiff. See Docs. 11-19. A scheduling and discovery order has been entered that limits discovery at the present stage to the Defendants' affirmative defense of failure to exhaust administrative remedies. See Doc. 34. The critical skills required at this stage of the litigation are reading comprehension and the ability to communicate in writing. At a minimum, Plaintiff will need to be able to respond

to future motion for summary judgment (if such motion is filed) by filing a sworn affidavit that clearly explains every step he took in trying to properly exhaust a grievance related to this lawsuit in prison prior to filing this case. This task is not overly complex. In sum, Plaintiff appears competent to litigate his own civil case through the exhaustion of administrative remedies phase.

For the forgoing reasons, Plaintiff's motion for the appointment of counsel (Doc. 29) is denied.

SO ORDERED.

DATED: February 4, 2013

Philip M. Frazier
United States Magistrate Judge

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: July 3, 2013

**TEXT ORDER**

ORDER granting [52] Motion for Status Update; denying [52] Motion to Appoint Counsel.

The Court has received a response to Defendants' answer. However, Plaintiff is advised to wait to adjudicate the Defendants' affirmative defenses until such time that they are raised by the Defendants. Discovery on the merits in this case is stayed until the resolution of the exhaustion of administrative remedies defense. There is a deadline of August 9, 2013 for the Defendants to file a motion raising the defense. If that motion is filed, Plaintiff will have 30 days to file a response to the motion. If the defense is not raised by the deadline, Defendants will have waived the defense and this case will proceed to discovery on the merits. Finally, Plaintiff's filings with the Court to date reaffirm the Court's prior decision that Plaintiff "appears competent to litigate his own civil case through the exhaustion of administrative remedies phase." Doc. 35. This issue will not be reconsidered until after the resolution of the exhaustion of administrative remedies issue.

Signed by Magistrate Judge Philip M. Frazier on 7/3/2013

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: October 15, 2013

**ORDER**

FRAZIER, Magistrate Judge:

Before the Court is Plaintiff's (Doc. 68) motion for appointment of counsel, which the Court construes as a motion for recruitment of counsel. For the following reasons, Plaintiff's motion for recruitment of counsel (Doc. 58) is granted.

The Court has no statutory authority to "appoint counsel" in cases brought under 42 U.S.C. 1983." *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866-67 (7th Cir. 2013) (citations omitted). "All a district court can do is seek a volunteer." Id. at 867. This district maintains a list of approximately 50 licensed and registered attorneys that have indicated an interest in representing indigent litigants in this district. These attorneys are best situated to take on pro bono representations. The Court has solicited Plaintiff's case to the entire list of pro bono volunteers, but no attorneys were immediately willing to represent Plaintiff in this matter. Plaintiff will be notified if an attorney volunteers to take his case and should continue to prosecute this case pro se to the best of his ability.

SO ORDERED.

DATED: October 15, 2013

Philip M. Frazier
United States Magistrate Judge

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: May 28, 2014

**TEXT ORDER**

ORDER denying as moot [69] Motion for Recruitment of Counsel. The court has already granted Plaintiff's request for recruitment of counsel. As recently as 5/28/2014, the court again solicited Plaintiff's case to a group of attorneys that have indicated their willingness to represent indigent parties. Plaintiff will be notified if an attorney volunteers.

Signed by Magistrate Judge Philip M. Frazier on 5/28/2014.

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: August 28, 2014

**TEXT ORDER**

ORDER re [81] Motion for Recruitment of Counsel. The Court previously granted recruitment of Counsel (Doc. 59). The Court has no statutory authority to "appoint counsel" in cases brought under 42 U.S.C. 1983. *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866–67 (7th Cir. 2013). All a district court can do is seek a volunteer. *Id.* at 867. This district maintains a list of approximately 50 licensed and registered attorneys that have indicated an interest in representing indigent litigants in this district. These attorneys are best situated to take on pro bono representations. On August 27, 2014 the Court again solicited Plaintiff's case to the entire list of pro bono volunteers. Plaintiff will be notified if an attorney volunteers to take his case and should continue to prosecute this case pro se to the best of his ability.

Signed by Magistrate Judge Philip M. Frazier on 8/28/14.

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff*,

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: January 7, 2015

**TEXT ORDER**

ORDER finding as moot [86] Motion to Appoint Counsel ; denying [86] Motion to Appoint Expert. Motion to Appoint Counsel is MOOT. The Court previously granted recruitment of Counsel (Doc. 59). Plaintiff will be notified if an attorney volunteers to take his case and should continue to prosecute this case pro se to the best of his ability. Motion to Appoint Expert is DENIED. Plaintiff's motion to appoint expert is premature at this time. The discovery period has closed. If the defendants are denied summary judgment then the plaintiff may seek an expert for trial.

Signed by Magistrate Judge Philip M. Frazier on 1/7/15.

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: June 22, 2015

## REPORT AND RECOMMENDATION

FRAZIER, Magistrate Judge:

Before the Court is the Defendants' Motion for Summary Judgment (Doc. 73). Plaintiff Bruce Giles filed a response in opposition (Doc. 80). Giles is an inmate with the Illinois Department of Corrections ("IDOC"). He filed this lawsuit on September 4, 2012. Shortly thereafter, Judge Gilbert conducted a merits review of Giles' complaint pursuant to 28 U.S.C. § 1915A and held that Giles articulated the following claims:

**Count 1:** Claim of Eighth Amendment deliberate indifference to Giles' serious mental health needs during his incarceration at Illinois River Correctional Center, Pontiac Correctional Center and Lawrence Correctional Center against Defendants Salvador Godinez, Richard Birkey, Leonta Jackson, Ron Zessin, Randy Pfister, Michael Lemke, Marc Hodge, Mark Storm and Randy Stevenson.

**Count 2:** Eighth Amendment conditions of confinement claim for failing to remedy the vermin infestation in Plaintiff's cells at Pontiac Correctional Center and

Lawrence Correctional Center against Defendants Randy Pfister, Michael Lemke, Marc Hodge, Mark Storm and Randy Stevenson.

**Count 3:** Eighth Amendment failure to protect claim against Defendants Marc Hodge, Mark Storm and Randy Stevenson for failing to protect the Plaintiff from an inmate attack that occurred in February 2012.

The Defendants now move for summary judgment on all three counts. For the following reasons, it is RECOMMENDED that the Defendants' Motion for Summary Judgment be GRANTED.

## I. BACKGROUND

Plaintiff Bruce Giles is an inmate with IDOC. He has a history of mental illness, caused in part by a severe head injury that occurred when he was 17 years old. He suffers from schizoaffective disorder, depression, auditory hallucinations and has attempted suicide. (Docs. 74-6, p.4, 74-7, p. 3). In Count 1 of Giles' complaint he asserts that the Defendants were deliberately indifferent to his mental health needs in violation of the Eighth Amendment. (Docs. 1, 10).

The events that give rise to this litigation began on September 22, 2010 when Giles was transferred from Dixon Correctional Center ("Dixon") to Illinois River Correctional Center ("Illinois River"). (Doc. 74-1, p. 2). Upon his arrival at Dixon he carried with him a document titled "Offender Health Status Transfer Summary." (Doc. 74-3, p. 1). As its name suggests, the document provides an overall summary of an inmate's physical and mental health. The document noted that Giles has a history of mental health issues. He had been

taking 20 mg of Prozac[1] and 50 mg of Depakote[2] once per day, but the Offender Health Status Transfer Summary form noted that these prescriptions were discontinued on July 23, 2010 while Giles was still at Dixon.

Shortly after arriving at Illinois River, Giles complained to one of the correctional officers that he needed his psychotropic medication. (Doc. 74-8, p. 9). Giles was then examined at the nurse sick call on October 3, 2010. Giles told the nurse on duty that he would like to see a psychologist and that he would like to continue his psychotropic medication. The nurse then noted that Giles was to be referred to a psychologist. (Doc. 74-3, p. 3). Three days later on October 6, 2010 Giles was transferred to Stateville Correctional Center ("Stateville") on a court writ. He was finally seen by a psychiatrist at Stateville on October 9. The psychiatrist prescribed Prozac, Depakote and Prolixin.[3]

Giles was transferred back to Illinois River on November 10, 2010. (Doc. 74-5, p. 1). For some unknown reason, Giles' Offender Health Status Transfer Sum-

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[1] Prozac (known under the generic name Fluoxetine) is a selective serotonin reuptake inhibitor (SSRI) used to treat depression, panic attacks and other mental health disorders. *See Fluoxetine* http://www.nlm.nih.gov/medlineplus/druginfo/meds/a689006.html (last visited June 18, 2015).

[2] Depakote (known under the generic name Valproic Acid) is used to treat seizures and symptoms of bipolar disorder. *See Valproic Acid*, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682412.html (last visited June 18, 2015).

[3] Prolixin (known under the generic name Fluphenazine) is an antipsychotic medication used to treat schizophrenia and other mental illnesses. See Fluphenazine, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682172.html (last visited June 18, 2015).

mary form failed to mention that he was receiving psychotropic medication. However Giles was seen by a mental health counselor on November 22 and a psychiatrist on November 25. The psychiatrist placed Giles back on the Prozac and Depakote. On December 8, 2010 Giles was seen by a mental health counselor and on December 12, 2010 Giles' medical records were reviewed by a psychiatrist. The psychiatrist reviewed Giles' medical records from Stateville and noticed that Giles received a prescription for Prolixin at that facility. The records indicated that Giles had seen some improvement on the medication and so the psychiatrist placed him back on the Prolixin. (Doc.74-5, p. 3).

Giles was seen by a mental health counselor on December 22, 2010 and on January 5, 2011. (Doc. 74-5, p. 4). On January 9, 2011 Giles was examined by a psychiatrist. On January 10, 2011 Giles attended a group therapy session. He would see the counselor again on January 19 and attend two more group therapy sessions on January 29 and January 31, 2011. Giles was a "no show" for the February 8, 2011 group therapy session.

On March 1, 4, 11, 15 and 16 Giles was seen by a mental health counselor. (Doc. 74-5, p. 7). Giles told the counselor that he was "not too good." He said that he was hearing voices in his head and that he was not receiving his Prolixin medication. The counselor addressed the medication issue with the prison pharmacy and Giles was placed back on the Prolixin. On March 21 Giles signed up for nurse sick call for mental health issues and on March 27, 2011 Giles was placed on suicide watch. Giles had cut himself in a suicide attempt but Giles' cellmate at the time notified the correctional staff.

On April 13, 2011 Giles was transferred to Pontiac Correctional Center ("Pontiac"). On April 26, 2011 the

psychiatrist discontinued Giles' existing psychotropic prescriptions and prescribed Prolixin, Prozac and Trazodone.[4] Giles was also briefly examined by a psychiatrist on April 29, 2011. At that time Giles was housed in the segregation unit. The psychiatrist noted that "there is nothing to contraindicate continued segregation placement at this time."

On May 24, 2011 the psychiatrist conducted a thorough session with Giles.[5] (Doc. 74-6, p. 4). The two dis-

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[4] Trazodone is used to treat depression. *See Trazadone*, http://www.nlm.nih.gov/medlineplus/druginfo/meds/a681038.html (last visited June 18, 2015).

[5] The psychiatrist's note states:

> N.B.: I met the inmate in person and interviewed him [at] the exam room. Identification: 33 y/o [Hispanic male] with a diagnosis of schizoaffective disorder and alcohol and THC dependence.
>
> Subjective Data: "I'm fine, except that I've not been getting my Prolixin." He reported his sleep was [illegible]; appetite and energy levels were good. He says he complies with routine showers, grooming, and keeps his cell neat. He denies ideas/intent/plan to hurt himself (suicide) or others (homicide). He made no mention of any other serious concerns. No ADRs.
>
> MSE: Awake, alert, oriented. 33 y/o HM in prison uniform. No acute distress/agitation. Grooming, eye contact, rapport fair. Speech fluent and coherent. Thoughts were organized.
>
> Mood: "Good." Affect: Denies SI/HI/Paranoia.
>
> …
>
> Summary and Treatment Plan: Psychoeducational issues were addressed. We discussed how best to cope with problems in prison. The benefits and risks a/w his meds were rehearsed. He accepts risk/benefit ratio and chose to continue to follow my recommendations. I plan no med changes. Staff alerted to [patient's] complaints [regarding] Prolixin. Offender was not judged to be at risk of imminent harm to self or others. He

cussed Giles' issues and medication. The psychiatrist concluded that Giles was not at risk of imminent harm to himself or others and that Giles should continue on the same medication.

On July 5, 2011 Giles was scheduled for a psychiatrist examination. (Doc. 74-6, p. 5). Giles refused the appointment and instead went out to the prison yard. On July 29 Giles was seen by a mental health professional. (Doc. 74-6, p. 6). The records state that "brief mental status evaluation was within normal limits." Giles was still in segregation at that time and the note indicates that "there is nothing to contraindicate continued segregation placement at this time."

While at Pontiac there was also a vermin infestation. (Doc. 74-8, p. 36). Giles frequently observed mice and cockroaches in his cell along with mouse droppings. However Giles stated at his deposition that his property was not damaged.

In early September, 2011 Giles was transferred to Lawrence Correctional Center ("Lawrence"). At Lawrence, Giles was seen by mental health professionals on three occasions in September (Doc. 74-7, pp. 1 – 9), four occasions in October (Doc. 74-7, pp. 10 – 15). The medical records from October note that Giles did not demonstrate any elevated risk of harm to himself or other. (Doc. 74-7, p. 11). However, Giles said that he experienced auditory hallucinations and PTSD symptoms. Giles was later examined by mental health professionals twice in November (Doc. 74-7, pp. 16-17) and twice in December (Doc. 74-7, pp. 18-20).

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agreed to report to staff/myself of any changes … should develop over time.

Jose Mathews MD, Staff Psychiatrist.

Giles was again seen by mental health professionals on three occasions in February 2012. (Doc. 74-7, pp. 21-25). This same month Giles was involved in an altercation with another inmate. During a visit to the chow hall Giles accidentally bumped into the other inmate. (Doc. 74-7, p. 27). Giles occasionally talks to himself and he happened to be doing so when he bumped into the other individual. The details of the altercation are not entirely clear, but the other inmate thought that Giles was speaking to him. The other inmate then called Giles a "bug" and struck him (Doc. 74-8, p. 44). Giles lost consciousness and both inmates were punished with segregation. Giles described the incident at his deposition:

Q: Do you remember his name?

A: I can't remember. I know I got a ticket. Because I didn't deny anything. They told me "Are you guilty?" And I said, "Yeah," because he – I'm not going to deny, say it was a fight. But I didn't start it. I defended myself.

Q: Had you ever had trouble with that inmate before?

A: No.

Q: Did you ever tell any DOC employees that you were afraid to be around him or you thought he would cause trouble with you?

A: No. Just, again, it happened because of my symptoms. I was there, and he just happened to be aggressive.

This altercation forms the basis of Giles' failure to protect claim at Count 3.

Giles was again seen by mental health professionals at Lawrence on March 1, April 5, April 11, May 15, May 23, June 11, June 25, July 17 and July 26. (Doc. 74-7, pp.

25-39). Giles expressed that he was generally unhappy at Lawrence and in segregation. (Doc. 74-7, p. 26). He suffered from anxiety and he was worried about possible future altercations with fellow inmates. It was also noted that Giles did not always follow through on the assigned therapy homework and that he lacked focus during the treatment sessions. (Doc. 74-7, p. 26). Moreover, there was tension between Giles and his assigned cellmates, and Giles frequently requested reassignment. (Doc. 74-7, p. 30).

On September 4, 2012 Giles filed this lawsuit. At his deposition (Doc. 74-8) Giles stated that his mental health claim (Count 1) is based on inadequate mental health therapy programs at Illinois River, Pontiac and Lawrence, inadequate suicide watch programs and the delays he experienced in receiving his psychotropic medication. Giles stated that his conditions of confinement claim (Count 2) is based on the vermin infestation he experienced at Pontiac and Lawrence. His failure to protect claim (Count 3) is based on the February 2012 altercation in the Lawrence chow hall.

The Defendants now move for summary judgment.

## II. ANALYSIS

Rule 56(a) of the Federal Rules of Civil Procedure states that summary judgment will be granted if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). When faced with a motion for summary judgment the facts and all reasonable inferences are to be drawn in favor of the nonmoving party. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 703 F.3d 966, 972 (7th Cir. 2012). Summary judgment must be denied "if the evidence is such that a reasonable jury could return a verdict for

the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, (1986).

Count 1 of Giles' complaint consists of a claim that the Defendants were deliberately indifferent to his mental health in violation of the Eighth Amendment. The Eighth Amendment to the Constitution prohibits the infliction of cruel and unusual punishments on prisoners. An inmate's punishment "must not involve the unnecessary and wanton infliction of pain," *Gregg v. Georgia*, 428 U.S. 153, 173 (1976), and "deliberate indifference to serious medical needs of prisoners" violates the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104, (1976).

In order to establish that a prison staffer's deliberate indifference to an inmate's medical needs violated the Eighth Amendment, the plaintiff must demonstrate subjective and objective elements of proof. *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011). The objective component is satisfied by an "objectively serious medical condition." "A medical condition is objectively serious if a physician has diagnosed it as requiring treatment, or the need for treatment would be obvious to a layperson." *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). To satisfy the subjective component, the defendant must have demonstrated "deliberate indifference" to the plaintiff's condition. *Arnett*, 658 F.3d at 751. Deliberate indifference requires a "sufficiently culpable state of mind." *Id.* This is a less demanding standard than purposeful, but it requires more than ordinary medical malpractice negligence. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). "The point between these two poles lies where the official knows of and disregards an excessive risk to inmate health or safety or where the official is both aware of facts from which the inference could be drawn that a substantial risk of seri-

ous harm exists, and he ... draws the inference." *Id.* (internal cites and quotes omitted). However a prisoner does not have to be completely ignored to have a valid Eighth Amendment claim. *Roe v. Elyea*, 631 F.3d 843, 858 (7th Cir. 2011). A prisoner who receives some treatment can still establish deliberate indifference, so long as the treatment received is "blatantly inappropriate." *Id.* (quoting *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir.2005)).

The body of case law addressing Eighth Amendment deliberate indifference to mental health conditions is not as well developed as that for physical health issues. The Eighth Amendment mental health cases that do exist primarily focus on prisoner suicides. See e.g.; *Collins v. Seeman*, 462 F.3d 757 (7th Cir. 2006); *Matos ex rel. Matos v. O'Sullivan*, 335 F.3d 553 (7th Cir. 2003); *Sanville v. McCaughtry*, 266 F.3d 724 (7th Cir. 2001), *Rice ex rel. Rice v. Corr. Med. Servs.*; 675 F.3d 650 (7th Cir. 2012) (pretrial detainee); *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254 (7th Cir. 1996) (pretrial detainee). As such, the standard for constitutionally adequate mental health care is not a clear one. Moreover, the appropriate course of care for treating mental health issues such as depression or anxiety may vary significantly between patient to patient. And a medical provider's decision to prescribe therapy, pharmaceuticals or a combination thereof is not something that easily lends itself to second guessing by the Court.

In the present case, Giles suffers from schizoaffective disorder, anxiety, depression and he has attempted to commit suicide. He has been prescribed multiple psychotropic medications including Prozac, Depakote and Prolixin. This is sufficient to establish that he suffers from an objectively serious medical condition. Giles

therefore satisfies the first prong of an Eighth Amendment deliberate indifference claim.

However, Giles fails to establish the second prong or "subjective element" of his deliberate indifference claim. Giles first asserts that his Eighth Amendment rights were violated when he failed to receive his psychotropic medication at Illinois River in the fall of 2010. Although Giles states that he should have been receiving his prescriptions, his medical records indicate that the prescriptions for Prozac and Depakote were discontinued shortly before he arrived at Illinois River. Approximately one week after arriving at Illinois River, Giles told a nurse that he needed his mental health medication. The nurse then referred Giles to see a psychologist. Before he could see a psychologist and three days after speaking to the nurse, Giles was transferred to Stateville on a court writ. Giles was then placed back on the medications shortly after arriving at Stateville. Although these delays were not optimal, they fail to rise to the level of an Eighth Amendment violation.

Additionally, Giles failed to receive his mental health medication from approximately November 10 to November 25 after Giles was transferred back to Illinois River. Giles' "Offender Health Status Transfer Summary" failed to mention that he was receiving those medications. Giles notified the psychiatrist of the issue on November 25 and Giles was placed back on the medications. Although the Court cannot commend such sloppy medical recordkeeping, these actions fail to rise to the level of an Eighth Amendment violation. Despite the overall delays, Giles' prescription issues were quickly addressed whenever he brought them to the attention of the prison health care providers. At most, such errors would amount to negligence. But "the Eighth Amendment is not a vehicle for bringing claims for

medical malpractice." *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996). Thus, no reasonable jury could find that his medication delays created an Eighth Amendment violation.

The rest of Giles' Eighth Amendment deliberate indifference claim is a bit vague. The thrust of his claim is that he should have had additional and more thorough therapy sessions, that he should not have been placed with non-mentally ill inmates, and that being placed in segregation exacerbated his condition. Giles would have preferred to be placed at Dixon instead of the other facilities, and he was in fact transferred back to Dixon in early 2014. (*See* Doc. 68). Although Giles was transferred back to Dixon, no reasonable jury could find that his treatment at the other facilities violated the Eighth Amendment. Giles received frequent mental health examinations and he was prescribed psychotropic medications. Giles desired a level of care that was not provided to him. However "[u]nder the Eighth Amendment, [a prisoner] is not entitled to demand specific care" nor is a prisoner "entitled to the best care possible." *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir. 1997).

Additionally, Giles' placement in segregation and with non-mentally ill inmates did not run afoul of the Eighth Amendment. The treating mental health professionals repeatedly determined that the severity of Giles' condition did not contraindicate placement in segregation. Giles disagreed with the professionals, but the existence of a disagreement does not necessarily mean that the Eighth Amendment was violated. The treating mental health professionals made a judgment call that Giles was suitable for continued placement in segregation. Moreover, segregation is used as a form of punishment, and by design, it is more unpleasant than the general prison units. Placing Giles with non-mentally ill

inmates also did not violate the Eighth Amendment. The Eighth Amendment does not mandate that mentally ill prisoners be separated from the non-mentally ill. Although Giles was occasionally harassed by other inmates because of his mental illness, his medical records indicate that the treating mental health professionals were working with Giles to address those issues. In sum, no reasonable jury could find that the Defendants' conduct violated the Eighth Amendment and they are therefore entitled to summary judgment for Count 1 of the Plaintiff's complaint.

Count 2 of Giles' complaint is a claim that his Eighth Amendment rights were violated because his cells at Pontiac and Lawrence were vermin infested. Giles was at Pontiac from April 2011 until September 2011. He frequently noticed cockroaches and mice in and around his cell at Pontiac, but none of his personal property was damaged because of the vermin. Giles also states in his response to the Defendants' Motion for Summary Judgment that he was provided inadequate cleaning supplies at Pontiac. The vermin issue at Lawrence was not discussed at the Plaintiff's deposition but it is very briefly mentioned in Giles' response to the Defendants' Motion for Summary Judgment. Giles states that at Lawrence there was "an infestation of mice, roaches that on numerous occasions [climbed] into Plaintiff's property box damaging commissary items."

A "significant infestation of cockroaches and mice" may constitute an Eighth Amendment violation. *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir.1996). However, in *Antonelli* the Plaintiff experienced "sixteen months of infestation and significant physical harm" due to cockroaches and mice. *Id.*, see also *Sain v. Wood*, 512 F.3d 886, 894 (7th Cir. 2008). In the present case, Giles observed the vermin but he suffered no

physical harm. Although the vermin did damage items in his property box, no reasonable jury could find that experience rose to the level of a deprivation of the "minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Thus, the Defendants are entitled to Summary Judgment for Count 2.

Count 3 of Giles' complaint is an Eighth Amendment failure to protect claim arising out of the February 2012 assault at Lawrence. Under the Eighth Amendment "prison officials have a duty ... to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To establish a failure to protect claim, Giles must demonstrate that that the Defendants were deliberately indifferent to conditions posing a "substantial risk of serious harm." Failure to protect claims typically arise "where custodians know of threats to a *specific detainee* posed by a *specific source*." *Brown v. Budz*, 398 F.3d 904, 915 (7th Cir. 2005). However, a prisoner plaintiff may establish a failure to protect claim in situations where the plaintiff is particularly vulnerable to being targeted. *Id.* For instance, there may be substantial risk of serious harm from a large class of detainees if the prisoner plaintiff has been labelled a "snitch." Eighth Amendment liability may also arise "where a specific individual poses a risk to a large class of inmates … even where the particular prisoner at risk is not known in advance." *Id.* (quoting *Greene v. Bowles*, 361 F.3d 290, 294 (6th Cir.2004)). For example, Eighth Amendment liability may arise if an inmate known to be sexually aggressive is placed in the general prison population with no supervision.

In the present case, there is no indication of animosity or hostility between Giles and his assailant prior to the February 2012 assault. Nor did Giles notify correc-

tional staff of any problems between the two prior to the assault. Although there was nothing to suggest that this assailant would attack Giles, Giles argues that the Defendants violated the Eighth amendment when they placed him with non-mentally ill inmates. However, Giles admitted at his deposition that the assault arose over a misunderstanding and the assailant "just happened to be aggressive." This kind of altercation can develop between mentally ill and non-mentally ill inmates alike. There is *a risk* of such an altercation occurring between many prisoners, but no reasonable jury could find that the Defendants were deliberately indifferent to a *substantial risk* to the Plaintiff in this instance. The Defendants are therefore entitled to summary judgment for Count 3.

The Court need not address the Defendants' qualified immunity arguments because the Defendants did not violate the Plaintiff's Eighth Amendment rights.

## RECOMMENDATIONS

It is RECOMMENDED that the Motion for Summary Judgment filed by Defendants Salvador Godinez, Richard Birkey, Leonta Jackson, Ron Zessin, Randy Pfister, Michael Lemke, Marc Hodge, Mark Storm and Randy Stevenson be GRANTED.

**SO RECOMMENDED.**
**DATED: June 22, 2015 .**

Philip M. Frazier
United States Magistrate Judge

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

No. 12-cv-965

BRUCE GILES,

*Plaintiff,*

v.

GLADYSE C. TAYLOR, *et al.*,

*Defendants.*

Filed: February 5, 2016

## MEMORANDUM AND ORDER

J. Phil Gilbert, District Judge:

This matter comes before the court on the Report and Recommendation ("R & R") (Doc. 91) of Magistrate Judge Philip M. Frazier with regard to Defendants' Motion for Summary Judgment (Doc. 73). Plaintiff's Objections to the R & R (Doc. 95) are timely filed.

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections aremade. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* "If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). As Plaintiff has filed objections, the Court will review the R & R *de novo.*

Plaintiff Bruce Giles is an inmate with the Illinois Department of Corrections (IDOC) with a history of

mental illness.[1] He suffers from schizoaffective disorder, anxiety, depression and has attempted suicide. The Court has no doubt that the plaintiff suffers from an objectively serious medical condition.

Count 1 of Plaintiff's complaint alleges that Defendants Salvador Godinez, Richard Birkey, Leonta Jackson, Ron Zessin, Randy Pfister, Michael Lemke, Marc Hodge, Mark Storm, and Randy Stevens were deliberately indifferent to Plaintiff's serious mental health needs. Count 2 alleges Defendants Randy Pfister, Michael Lemke, Marc Hodge, Mark Storm and Randy Stevenson failed to remedy the vermin infestation in Plaintiff's cell and Count 3 alleges that Defendants Marc Hodge, Mark Storm, and Randy Stevenson failed to protect the Plaintiff from an inmate attack that occurred in February of 2012.

The R & R recommends that Motion for Summary Judgment filed by Defendants Salvador Godinez, Richard Birkey, Leonta Jackson, Ron Zession, Randy Pfister, Michael Lemke, Marc Hodge, Rark Storm and Randy Stevenson be granted.

The Plaintiff's objections state that since Plaintiff's complaint survived review under 28 U.S.C. § 1915A, it should survive summary judgment and that his complaint should be view as "Pattern, Practice, and Policy" of deliberate indifference to Plaintiff's serious mental health needs. The objections go on to list the various exhaustion of administrative remedies which are not at issue in the R & R, but the Court perceives the information is provided as demonstrating Plaintiff's at-

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[1] The R & R outlines his medical treatment and prescription history so the Court will not repeat it here.

tempts at obtaining assistance and/or that the Defendants were aware of the issues and failed to take action.

Plaintiff also argues that deliberate indifference results from unlicensed psychiatric/mental health counselors and that only one licensed psychiatrist is available for three prisons. Having only one psychiatrist limits the amount of time the psychiatrist is available to spend with each patient and as such, puts all seriously mentally ill inmates at risk of harm or death. He also states that suicide prevention procedures are inadequate and that prison staff are not properly trained/instructed /supervised to deal with the mentally ill. He also argues that mentally ill inmates should not be housed with non-mentally ill inmates as the non-mentally ill inmates do not understand, nor can they assist, with mentally ill inmates and that housing together can lead to such incidents as alleged in the complaint.

Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Spath v. Hayes Wheels Int'l-Ind., Inc.*, 211 F.3d 392, 396 (7th Cir. 2000). The reviewing court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Chelios v. Heavener*, 520 F.3d 678, 685 (7th Cir. 2008); *Spath*, 211 F.3d at 396.

Mental health issues and adequate mental health care is a difficult area for the Courts to address since a treatment that may work for one patient may be insufficient for the next. Treating mental health professional are required to make difficult determinations with regard to the placement of mentally ill inmate and their

placement among general prison population. The plaintiff received frequent mental health examinations; was prescribed psychotropic medications; and there were no indication that he was in an excessive risk while housed in segregation.

The Court has conducted a *de novo* review. The Plaintiff's Objections (Doc. 95) contain the same arguments[2] put forth in Plaintiff's Response (Doc. 80) to the Defendants' Motion for Summary Judgment. These arguments were addressed in the R & R and for the reasons stated in the R & R, the Court agrees that summary judgment is appropriate. As such, the Court hereby **ADOPTS** the Report and Recommendation (Doc. 91) in its entirety and **GRANTS** Defendants' Motion for Summary Judgment (Doc. 73).

The Clerk of Court is **DIRECTED** to enter judgment according.

**IT IS SO ORDERED.**

DATED: 8/25/2015

J. Phil Gilbert
United States District Judge

APPENDIX L

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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No. 15-3077
Bruce Giles,

*Plaintiff-Appellant*,

v.

Salvador A. Godinez, Acting Director, et al.,

*Defendants-Appellees.*

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Filed: March 1, 2019

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Before FLAUM, MANION, and ST. EVE, Circuit Judges.

No judge of the court having called for a vote on the Petition For Rehearing En Banc filed by Plaintiff-Appellant on February 12, 2019, and all of the judges on the original panel having voted to deny the Petition for Rehearing,

IT IS HEREBY ORDERED that the Petition For Rehearing and Rehearing En Banc is DENIED.