Appendix G

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 4, 2021

Before

DIANE S. SYKES, *Chief Judge*

JOEL M. FLAUM, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 20-1185

JEFFERY FERGUSON,
Plaintiff-Appellant,

v.

COOK COUNTY CORRECTIONAL FACILITY/CERMAK, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 19 C 4607

Matthew F. Kennelly,
Judge.

ORDER

On consideration of the petition for rehearing and for rehearing en banc filed by Plaintiff-Appellant on December 8, 2020, no judge in active service has requested a vote on the petition for rehearing en banc, and the judges on the original panel have voted to deny rehearing.

Accordingly, the petition for rehearing is DENIED.

Exhibit
Appendix E

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 10, 2020*
Decided November 13, 2020

Before

DIANE S. SYKES, *Chief Judge*

JOEL M. FLAUM, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 20-1185

JEFFREY FERGUSON,
Plaintiff-Appellant,

v.

COOK COUNTY CORRECTIONAL FACILITY/CERMAK, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 19 C 4607

Matthew F. Kennelly,
Judge.

ORDER

Jeffrey Ferguson, a pretrial detainee at Cook County Jail in Chicago, filed suit under 42 U.S.C. § 1983 alleging that the law enforcement officers and medical providers who interacted with him after his arrest failed to properly address his mental-health

* The appellees were not served with process and are not participating in this appeal. Because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court, the appeal is submitted on the appellant's brief and the record. FED. R. APP. P. 34(a)(2)(C).

needs. He primarily alleges that his deteriorating mental health and new arrests after posting bond resulted from the defendants' failure to follow through on an order to involuntarily commit him. After affording Ferguson two chances to amend his complaint, the district court dismissed the case at screening. Because Ferguson's complaint does not plausibly allege that any of the county- or city-employed defendants acted at least recklessly towards him, and the privately employed defendants are not subject to suit under § 1983, we affirm.

According to the allegations in Ferguson's complaint, which we take as true at the pleading stage, *see Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020), a Chicago police officer arrested Ferguson in 2018 for allegedly committing residential arson and took him to a neighborhood station for interrogation. Ferguson was acting erratically and making delusional statements, so the officer transferred Ferguson to Cermak Health Services at the Cook County Jail for psychiatric services. Aaliyah Balawender, a physician's assistant, treated him there for four days, under the direction of a clinical psychiatrist. Then, Ferguson was granted an individual (personal-recognizance) bond and ordered to be on house arrest until trial. Balawender, however, completed an inpatient certificate stating Ferguson presented a danger to himself and others. She sought his involuntary admission at Mt. Sinai Hospital under Illinois's civil commitment laws. A Cook County sheriff's deputy transported Ferguson to Mt. Sinai's emergency room and presented the certificate. Medical providers evaluated Ferguson upon arrival and, after determining he did not require hospitalization, discharged him. The deputy sheriff then drove him home, where he began house arrest with electronic monitoring.

Ferguson remained in a psychotic state, with no recollection of being transported from Mt. Sinai to his apartment. Alone in his apartment, his mental health continued to deteriorate. A staff member at Cermak that Ferguson believes to be Balawender called Ferguson's father to express concern that he was mentally unstable, but no further action was taken by any defendant. Soon after, Ferguson was arrested for battery and other offenses and is now in jail awaiting trial.

Ferguson brought a § 1983 claim against Cermak and Mt. Sinai Hospital, asserting that if his mental condition had been properly stabilized after his initial arrest for residential arson—his first ever felony arrest—he would not have gotten into trouble again. He later added as defendants (mostly as John or Jane Does) the arresting police officer, Balawender and the supervising psychiatrist, the sheriff's deputy who transported him to and from Mt. Sinai, and doctors and nurses at Mt. Sinai. The district

court screened the complaint under 28 U.S.C. § 1915A and, after two amendments, dismissed the case, concluding that he did not plausibly allege that any Cermak or law-enforcement defendant acted with the requisite state of mind and that the Mt. Sinai defendants were not amenable to suit under § 1983. Ferguson appeals, and we review the district court's decision de novo. *See Schillinger*, 954 F.3d at 994.

On appeal, Ferguson first takes issue with the district court's conclusion that he failed to allege that the county and city employees acted with the requisite mental state. To state a claim for deficient medical treatment in violation of the Fourteenth Amendment, pretrial detainees must plausibly allege that the care they received was "objectively unreasonable," meaning the defendants acted "purposefully, knowingly, or perhaps even recklessly." *Miranda v. County of Lake*, 900 F.3d 335, 353 (7th Cir. 2018); *see Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019) (extending the objective inquiry "to all Fourteenth Amendment conditions-of-confinement claims brought by pretrial detainees"). This requires the defendants' actions rise above negligence and resemble "something akin to reckless disregard." *Miranda*, 900 F.3d at 353.

Here, the arresting officer did not act unreasonably by taking Ferguson to the police station instead of seeking immediate treatment based on his erratic behavior, as Ferguson insists he should have. Once arrested, Ferguson did not present an immediate danger to himself or others due to his confinement. *See Ortiz v. City of Chicago*, 656 F.3d 523, 531 (7th Cir. 2011) (explaining that urgent need for care is a factor arresting officers must consider). Further, he was not long at the police station. After observing him, the arresting officer attended to Ferguson's condition by transferring him directly to a facility (Cermak) where his needs could be further addressed.

Ferguson also contends that the Cermak defendants acted unreasonably by not ensuring that he was involuntarily committed, as they thought necessary. As an initial matter, one does not have a constitutional right to be committed or otherwise deprived of liberty. *Wilson v. Formigoni*, 42 F.3d 1060, 1066 (7th Cir. 1994). Once someone is released from physical custody (for instance by being bonded out), the detaining authority no longer has an obligation to provide medical services. *Collignon v. Milwaukee County*, 163 F.3d 982, 991 (7th Cir. 1998); *see Paine v. Cason*, 678 F.3d 500, 508 (7th Cir. 2012) (no decision establishes "a right to be held in custody pending medical treatment"). Regardless, the allegations do not plausibly suggest that the Cermak defendants acted recklessly. Balawender's actions reflect a concern for Ferguson and his treatment: she sought continued care at an appropriate facility and even contacted his

father to express her concern after Mt. Sinai failed to admit him. Without an ongoing duty to Ferguson, her conduct was not objectively unreasonable.

Ferguson also did not allege any circumstances suggesting that the deputy sheriff who transported him to Mt. Sinai and later to his apartment acted unreasonably. He appropriately deferred to the judgment of medical providers at Mt. Sinai, *see Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010), who determined that Ferguson need not be involuntarily committed. Though Ferguson alleges that the deputy acted recklessly by leaving him alone under house arrest despite his psychotic state, he had just been told that Ferguson did not require commitment, only medication. Though Ferguson argues that he should have been taken back to Cermak at this point, he had no such right to be taken back into physical custody for further treatment. *See Paine*, 678 F.3d at 507–08 (citing *Stevens v. City of Green Bay*, 105 F.3d 1169 (7th. Cir. 1997)).

As for the Mt. Sinai defendants, we do not agree with the district court that Ferguson's claims fail because, having posted his individual bond and having left Cermak (i.e., jail), he was not in custody at the time. Though someone on bail subject to electronic monitoring arguably is not in custody, *see Reno v. Koray*, 515 U.S. 50, 57, 63 (1995), the events at Mt. Sinai happened before Ferguson was taken home. A deputy sheriff brought a handcuffed Ferguson to and from Mt. Sinai in his cruiser, so Ferguson was in the custody of the Cook County Sheriff's Department until he was released at his apartment. *See DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989).

Of course, the mere fact that Ferguson was in custody at the time is not sufficient to expose the Mt. Sinai defendants to § 1983 liability. *See Spencer v. Lee*, 864 F.2d 1376, 1382 (7th Cir. 1989). Dismissal was still proper because they did not act under the color of state law. *See* 42 U.S.C. § 1983. Private actors do not expose themselves to suit under § 1983 simply by being involved in the involuntary commitment process, although a private actor may function as a state actor if compelled by the state to commit a mentally ill patient or if contracted by the state to provide detainees with medical care.[1] *Spencer*, 864 F.2d at 1377; *see Miranda*, 900 F.3d 346–47. Here, the allegations do not support an inference that Mt. Sinai had to admit Ferguson. Illinois law does not force a

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[1] As we presume the district court did, we can take judicial notice of Mt. Sinai's status as a private, not-for-profit corporation. *See White v. Keely*, 814 F.3d 883, 885 n.2 (7th Cir. 2016); *Sinai Health System's Corporation File Detail Report*, OFFICE OF THE ILLINOIS SECRETARY OF STATE, https://www.ilsos.gov/corporatellc/CorporateLlcController (last visited Nov. 10, 2020).

receiving institution to commit a patient; instead, medical professionals must conduct an independent examination and release a patient who, in their judgment, does not require commitment. *See* 405 ILCS 5/3-610. Additionally, Ferguson's complaint makes clear that Balawender had Ferguson sent to Mt. Sinai under the civil-commitment laws because he was *not* a detainee anymore, so Mt. Sinai was not acting as a contractor for detainee healthcare. *West v. Atkins*, 487 U.S. 42, 56 (1988) ("[T]he dispositive issue concerns the relationship among the State, the physician, and the prisoner.").

Finally, Ferguson argues that the defendants violated numerous Illinois statutes during the commitment process and that certain doctors and nurses at Mt. Sinai committed medical malpractice by not medicating him or admitting him. Like the district court, we express no opinion on any violations of state law, except to say that they do not correspond to violations of the Constitution necessary to form the basis for a § 1983 claim. *See Manuel v. City of Joliet*, 137 S. Ct. 911, 916 (2017); *Waubanascum v. Shawano County*, 416 F.3d 658, 670 (7th Cir. 2005). The district court dismissed any state-law claims without prejudice, so Ferguson can pursue them in state court (and it appears that he is).

We have considered Ferguson's other arguments, and none has merit.

AFFIRMED

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Jeffrey Dean Ferguson (#2018-10122076),	)	
	)	
Plaintiff,	)	
	)	Case No. 19 C 4607
	)	Appeal No. 20-1185
v.	)	
	)	Hon. Matthew F. Kennelly
Cook County Correctional	)	
Facility/Cermak, and Mt. Sinai Hosp.	)	
	)	
Defendant.	)	

ORDER

Plaintiff's motion to amend the judgment [16] is denied. Plaintiff's notice of appeal [19] is now effective, *see* Fed. R. App. P. 4(a)(4)(B), and his motion for extension of time to file a notice of appeal [17] is denied as moot, because his timely Rule 59(e) motion suspended the deadline for filing an appeal until the motion was ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Plaintiff's motions to proceed on appeal *in forma pauperis* [18] [26] are granted. The Court orders the trust fund officer at Plaintiff's place of incarceration to immediately deduct $18.58 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee and to continue making monthly deductions in accordance with this order. The Court directs the Clerk to send a copy of this order (electronically, if possible) to the trust fund officer of the facility having custody of Plaintiff and to the Court's Fiscal Department. The Court orders the trust fund officer at Plaintiff's place of incarceration to make monthly deductions in accordance with this order. The Clerk is directed to send copies of this order to Plaintiff and the PLRA Attorney, United States Court of Appeals for the Seventh Circuit.

STATEMENT

Plaintiff Jeffrey Dean Ferguson, an inmate at Cook County Jail, filed the present lawsuit under 42 U.S.C. § 1983, alleging that Defendants failed to adequately treat his mental health condition by not securing and/or performing inpatient psychiatric hospitalization on his behalf, leading ultimately to his commission of additional crimes. On December 30, 2019, after two opportunities to amend his complaint to state a viable claim, the Court dismissed Plaintiff's second amended complaint with prejudice for failure to state a claim and entered judgment. On January 21, 2020, Plaintiff filed a motion to reconsider under Rule 59(e). Then, on February 4, 2020, Plaintiff filed a motion for extension of time to file a notice of appeal, a notice of appeal, and an application to proceed *in forma pauperis* on appeal. He filed another application to proceed *in forma pauperis* on appeal on February 25, 2020. The Court rules on these motions in this order.

The Court has jurisdiction to decide the Rule 59(e) motion. *See* Fed. R. App. P. 4(a)(4)(B)(i). Plaintiff filed a timely motion to vacate the judgment under Fed. R. Civ. P. 59(e).

To obtain relief under Rule 59(e), the movant must "clearly establish[ ] a manifest error of law or fact" or point to newly discovered evidence. *Burritt v. Ditlefsen*, 807 F.3d 239, 253 (7th Cir. 2015). A Rule 59(e) motion "is not an appropriate forum for rehashing previously rejected arguments." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

Plaintiff's second amended complaint differed little from the previous two iterations. Plaintiff alleged that he was arrested and detained at Cook County Jail on January 20, 2018. Four days later, on January 24, 2018, Plaintiff bonded out of the Jail and was ordered to be placed on electric monitoring,. That same day, Cermak (the Jail's healthcare unit) medical personnel evaluated Plaintiff, documented that he was in a psychotic state and a danger to himself and others, gave him several medications, and ordered his transfer to a hospital for inpatient psychiatric hospitalization. Cook County Sheriff's personnel transported Plaintiff to Mt. Sinai Hospital for stabilization and inpatient psychiatric care. But instead of admitting Plaintiff, medical personnel at Mt. Sinai evaluated and discharged Plaintiff the next day, thereby contradicting Cook County's orders. A Cook County Sheriff's employee transported Plaintiff back to his apartment and placed him on electronic monitoring. The Cermak personnel followed up by calling Plaintiff's father and relaying concern that Plaintiff was unstable and alone in his apartment. Nonetheless, in early February 2018, Plaintiff was arrested for criminal damage to property and aggravated battery and was again detained at Cook County Jail, then "in a full state of psychosis".

The Court concluded that Plaintiff's allegations did not state a viable federal claim. As to the Cook County Defendants (the Cermak and other Sheriff's personnel), the Court explained that Plaintiff's allegations did not demonstrate the mental-state element of a Fourteenth Amendment claim, namely that they provided inadequate medical care "purposefully, knowingly, or perhaps even recklessly" as to the consequences of the care. *See Miranda v. County of Lake*, 900 F.3d 335, 352-54 (7th Cir. 2018). To the contrary, the actions of the Cook County defendants, as pleaded, demonstrated attentiveness and concern for Plaintiff's situation: they evaluated Plaintiff, appreciated the extent of his mental illness by ordering inpatient hospitalization, transported Plaintiff to the hospital, and then upon Plaintiff's discharge, contacted his father. With respect to the Mt. Sinai Defendants, the Court explained that their care decisions were not an actionable basis of a federal civil rights claim because a person discharged from jail, even if under electronic monitoring, no longer has a federal constitutional right to medical treatment. *See Hubbard v. Cope*, 2008 WL 2410856, at *3 (S.D. Ill. June 11, 2008); *see also generally DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). The Court noted that Plaintiff may have a state-court remedy regarding the Mt. Sinai defendants' decision to discharge him, but he had no federal claim against them. Accordingly, the Court dismissed Plaintiff's second amended complaint for failure to state a claim. Concluding that a third opportunity to amend would be futile, the Court entered judgment dismissing Plaintiff's action, without prejudice to Plaintiff's ability to pursue any related state-law claims in an appropriate forum.

In his Rule 59(e) motion, Plaintiff first contends that the Cook County Defendants had a duty to "follow through" (how, he does not explain) on their own referral for inpatient psychiatric hospitalization, but failed to do so. Plaintiff, however, makes no compelling argument nor cites any on-point authority indicating that federal law guaranteed him inpatient hospitalization or required any further action by Cook County after Mt. Sinai medical personnel decided to discharge

Plaintiff from the hospital. Plaintiff has not shown an error in the Court's determination that the Cook County Defendants are not federally liable for failing to somehow override Mt. Sinai's decision under these facts.

Plaintiff also argues that he should be permitted to proceed against the Cook County Defendants because they failed to provide him with anti-psychotropic medication upon his release. Plaintiff alleged that "to the best of Plaintiff's knowledge, he was not provided with a 30-day supply of psychotropic medications, nor given after-care instructions by Cermak Medical Facility." He cites *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir. 1999), in which the Ninth Circuit recognized that the state may owe a former inmate requiring medication after his release an affirmative duty for a reasonable transitional period, because a prisoner's ability to secure medication for himself "is not restored the instant he walks through the prison gates and into the civilian world." *Id.* at 1164; *see Braxton v. Outagamie Cty.*, No. 17-CV-1072-PP, 2018 WL 4374935, at *3 (E.D. Wis. Sept. 13, 2018) (former inmate's allegation that jail officials refused to call medical staff to obtain his psychiatric medications, so he was released without them, survived screening); *Ryan v. Armor Health*, No. 17-C-1156, 2018 WL 2324110, at *3 (E.D. Wis. May 22, 2018) (former inmate could proceed on claim that Nurse ignored policy of providing release medication, despite knowledge of risk to plaintiff of skipped doses); *Charles v. Cty. of Orange*, No. 16-CV-5527 (NSR), 2017 WL 4402576, at *9 (S.D.N.Y. Sept. 29, 2017) (civil detainees' allegation that they could not obtain necessary and immediate medical care upon their release survived a motion to dismiss); *cf. George v. Rockland State Psychiatric Ctr.*, No. 10-CV-8091 NSR, 2014 WL 5410059, at *8 (S.D.N.Y. Oct. 23, 2014) (rejecting parolee's due process claim when the parolee was able to arrange his own medical treatment); *McGhie v. Main*, No. 11 CV 3110, 2011 WL 4852268, at *3 (E.D.N.Y. Oct. 12, 2011) (same); *Kennedy v. Correct Care Sols.*, No. 05:17CV00168 DPM/PSH, 2017 U.S. Dist. LEXIS 111357, at *4–5 (E.D. Ark. June 26, 2017) (finding no binding precedent establishing a constitutional right to post-release medical care). This case differs from *Wakefield* and others allowed to proceed because Plaintiff does not allege that Cook County ignored his need for treatment upon release. To the contrary, Cook County ordered that Plaintiff receive inpatient hospitalization and transported him to an outside hospital. The County would have been justified in assuming that any follow-up care, including medications, would be determined, communicated, and provided to Plaintiff by hospital personnel.

Last, as to the Mt. Sinai Defendants, Plaintiff argues that the Court's analysis is flawed because, he says, he was "still a detainee" when he went to Mt. Sinai Hospital. He states that he left the Jail in handcuffs, arrived at Mt. Sinai in handcuffs, was not in a position to discharge himself if he so chose, and left Mt. Sinai in handcuffs. Even considering these new facts, Plaintiff has still not stated a claim against the Mt. Sinai Defendants. The fundamental problem with Plaintiff's claim against the Mt. Sinai Defendants is that private parties, like the medical professionals at the hospital who evaluated Plaintiff, cannot be held liable under § 1983 unless they were acting under color of state law when they treated him. *See, e.g., Parratt v. Taylor*, 451 U.S. 527, 535 (1981), overruled on other grounds by *Daniels v. Williams*, 1474 U.S. 327 (1986). Although Plaintiff was originally escorted to the hospital at the behest of Cook County (and a Cook County official remained with him), at issue here is the unilateral decision of the Mt. Sinai personnel – *contrary* to Cook County's directions – not to commit Plaintiff for inpatient psychiatric treatment. There is no allegation that the hospital personnel acted in concert with state actors.

Absent that, Seventh Circuit precedent forecloses finding state action. In *Spencer v. Lee*, 864 F.2d 1376 (7th Cir. 1989) (en banc), the Seventh Circuit concluded that a private physician and hospital that detained plaintiff against his will under Illinois' involuntary commitment statute and provided allegedly infirm care were not state actors. The court found that Illinois neither compelled nor encouraged commitment simply because it enacted provisions for the involuntary admission of mentally ill persons, *id.* at 1379, and that involuntary civil commitment of the mentally ill was not traditionally a governmental function, *id.* at 1379-81. *See also Flanagan v. Methodist Hosp. of Chicago*, No. 95 C 7287, 1996 WL 374131, at *3 (N.D. Ill. June 28, 1996) (same held true – private hospital not a state actor – where determination that plaintiff should be committed originated with recommendation of city social worker and police officer). The decision *not* to commit, rather than to commit, a patient makes no difference under this state-action analysis. Given the absence of state action, any claims against the Mt. Sinai Defendants are not viable federal claims.

For these reasons, the Court denies Plaintiff's Rule 59(e) motion.

Finally, the Court finds that Plaintiff's appeal is taken in good faith, *see* 28 U.S.C. § 1915(a)(3), and he appears currently unable to prepay the full $505 appellate filing fee. Following a review of Plaintiff's *in forma pauperis* applications and his trust fund ledgers, the Court grants his applications and pursuant to 28 U.S.C. § 1915(b)(1), (2), orders Plaintiff to pay (and the facility having custody of him to automatically remit) an initial partial filing fee of $18.58. Plaintiff is further ordered to pay (and the facility having custody of him to automatically remit) to the Clerk twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $505 appellate filing fee is paid in full. The Court directs the trust fund officer to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and should clearly identify Plaintiff's name and the case number assigned to this case. The inmate trust account office shall notify transferee authorities of any outstanding balance in the event of Plaintiff's transfer to another correctional facility.

Date: 3/5/2020

MATTHEW F. KENNELLY
United States District Judge

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Jeffrey Dean Ferguson (#2018-10122076), Plaintiff,	)	
	)	Case No. 19 C 4607
v.	)	
	)	Judge Matthew F. Kennelly
Cook County Correctional Facility/Cermak, and Mt. Sinai Hosp. Defendants.	)	

ORDER

For the reasons stated below, the Court directs the Clerk to enter judgment dismissing this case with prejudice, but without prejudice to Plaintiff's ability to pursue any state-law claims in state court. This counts as one of Plaintiff's three allotted dismissals under 28 U.S.C. § 1915(g), Plaintiff's motion for attorney representation [11] is terminated as moot.

STATEMENT

Plaintiff Jeffrey Dean Ferguson, an inmate at Cook County Jail, has filed a *pro se* lawsuit under 42 U.S.C. § 1983. He claimed in his original and first amended complaints that Defendants failed to adequately treat his mental health condition by not securing and/or performing inpatient psychiatric hospitalization on his behalf, leading ultimately to his commission of additional crimes. Plaintiff has submitted a second amended complaint, which the Court has reviewed under 28 U.S.C. § 1915A to determine if it is frivolous or fails to state a claim upon which relief may be granted. In doing so, the Court has read the second amended complaint liberally and takes Plaintiff's factual allegations as true.

The allegations contained in Plaintiff's submission are substantially similar to those in the prior versions of the complaint and therefore do not state a claim. Plaintiff continues to allege that he was arrested and detained at Cook County Jail on January 20, 2018. Medical personnel at the Jail evaluated Plaintiff and ordered that he be transferred to a hospital for inpatient psychiatric hospitalization. Plaintiff bonded out of the Jail four days later, on January 24, 2018, and Cook County personnel transported him to Mt. Sinai Hospital for the inpatient psychiatric care. But instead of providing care, Mt. Sinai personnel discharged Plaintiff the next day, thereby ignoring Cook County's orders. A Cook County employee transported Plaintiff back to his apartment and placed him on electronic monitoring. Cook County medical personnel followed up by calling Plaintiff's father and relaying concern that Plaintiff was unstable and alone in his apartment. Nonetheless, in early February 2018, Plaintiff was arrested for criminal damage to property and aggravated battery and was again detained at Cook County Jail, then "in a full state of psychosis".

For the reasons explained in the prior orders of this Court, these allegations do not state a viable claim under federal law. As explained more fully in those orders, Plaintiff does not sufficiently allege the mental-state element of a Fourteenth Amendment claim, namely that Jail

Public Act 101-440, House Bill 94

"truth in sentencing" - now eligible for sentencing credits for satisfactory completion of rehabilitative programming in the Dept. of Corrections

* Natural life is not entitled for credits

assaillant
assailant

assailant
assaillant

personnel provided inadequate medical care "purposefully, knowingly, or perhaps even recklessly" with regard to the consequences of the care. *See Miranda v. County of Lake*, 900 F.3d 335, 352-54 (7th Cir. 2018); *see also Grant v. Schmidt*, No. 18-2680, 2019 WL 6697142, at *2 (7th Cir. Dec. 9, 2019) (in Eighth Amendment context, released inmate could not plead mental-state element because he could not show that commission of future crimes was reasonably foreseeable consequence of lack of mental-health treatment in prison). The actions of the Cook County defendants, as alleged, reflect attentiveness and concern for Plaintiff's situation: they evaluated Plaintiff, appreciated the extent of his mental illness by recommending inpatient hospitalization, transported Plaintiff to the hospital, and then upon Plaintiff's discharge, contacted his father. With respect to the Mt. Sinai Defendants, the Court has already explained to Plaintiff that their decisions do not provide a basis for a claim under federal law, because a person under electronic monitoring does not have a federal constitutional right to medical treatment. *See Hubbard v. Cope*, 2008 WL 2410856, at *3 (S.D. Ill. June 11, 2008); *see also generally DeShaney v. Winnebago Co. Dept. of Soc. Servs.*, 489 U.S. 189, 200 (1989). Plaintiff has not alleged that his electronic monitoring limited his freedom to seek mental health treatment on his own. Plaintiff may be able to pursue a lawsuit under state law (in state court) regarding the Mt. Sinai defendants' decision to discharge him from the hospital, but he has viable claim under federal law.

Accordingly, the Court dismisses Plaintiff's this case—specifically, Plaintiff's federal claims—for failure to state a claim upon which this Court can grant relief. The Court has already given Plaintiff two opportunities to amend, and he appears to have set forth his best case. As such, any further amendment would be futile. This dismissal counts as one of Plaintiff's three allotted dismissals under 28 U.S.C. § 1915(g), but is without prejudice to Plaintiff's ability to pursue any related state-law claims in state court.

If Plaintiff wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). If Plaintiff appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. *See Evans v. Ill. Dep't of Corrs.*, 150 F.3d 810, 812 (7th Cir. 1998). If Plaintiff seeks leave to proceed *in forma pauperis* on appeal so that he may pay the appellate filing fee in installments, he must file a motion seeking leave to do so in this Court. *See* Fed. R. App. P. 24(a)(1). His motion must include his intended grounds for appeal. If the appeal is found to be non-meritorious, Plaintiff could be assessed another "strike" under 28 U.S.C. § 1915(g). If Plaintiff accumulates three dismissals under 1915(g), he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Date: 12/30/2019

MATTHEW F. KENNELLY
United States District Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Jeffrey Dean Ferguson (#201810122076), Plaintiff,	)	
	)	Case No. 19 C 4607
v.	)	
	)	Judge Matthew F. Kennelly
Cook County Correctional Facility/Cermak, and Mt. Sinai Hosp. Defendant.	)	

ORDER

The Court denies Plaintiff's motion for leave to file [7]. The Court has reviewed the proposed amended complaint under 28 U.S.C. § 1915A and finds that it fails to state a federal claim upon which relief can be granted. Plaintiff is given until November 12, 2019 to submit a proposed second amended complaint that states a federal claim if he believes he can do so in accordance with this order. Failure to do so will result in dismissal of this case with prejudice for failure to state a claim. The Clerk is directed to mail Plaintiff a copy of this order and a blank amended complaint form. Plaintiff's motion to proceed pro se [6] is stricken as unnecessary.

STATEMENT

Pro se Plaintiff Jeffrey Dean Ferguson, a detainee at Cook County Jail, has filed suit under 42 U.S.C. § 1983, challenging medical care provided to him at the Jail during a prior detention in January 2018. The Court dismissed Plaintiff's original complaint, with leave to amend. The Court has reviewed Plaintiff's proposed amended complaint under 28 U.S.C. § 1915A to determine if it is frivolous or fails to state a claim upon which relief may be granted. In doing so, the Court reads the amended complaint liberally and takes Plaintiff's factual allegations as true.

Plaintiff alleges that on January 20, 2018, he was arrested for residential arson. Officer John Doe #1 saw that Plaintiff was erratic and making delusional statements but refused to "treat the Plaintiff medically" before interrogating and arresting him. Plaintiff was detained at Cook County Jail but bonded out on January 24, 2018 and was placed on house arrest. Cook County Physician Assistant Balawender prepared an inpatient certificate that stated that Plaintiff] was "currently manic, unable to provide for his own basic needs, labile, grandiose, delusional, and making threatening statements to peers and staff. . . [and] was 'a danger to self and others.'" Balawender ordered transfer of Plaintiff to a hospital for inpatient psychiatric hospitalization. But Balawender, along with Dr. John Doe #2 and R.N. Jane Doe #3 (both Cook County Jail employees), ultimately failed to ensure he received that inpatient psychiatric care. Once Plaintiff bonded out of Cook County Jail, Officer John Doe #4 (another Cook County employee) transported him to Mt. Sinai Hospital for the inpatient psychiatric care. But Mt. Sinai personnel, specifically Dr. John Doe #6 and R.N. Jane Doe #5, discharged Plaintiff, thereby ignoring Cook County's orders and despite "knowledge of an emergency." Officer John Doe #4 took Plaintiff to his apartment, where he was on house arrest. The next day, January 25, 2018, PA Balawender

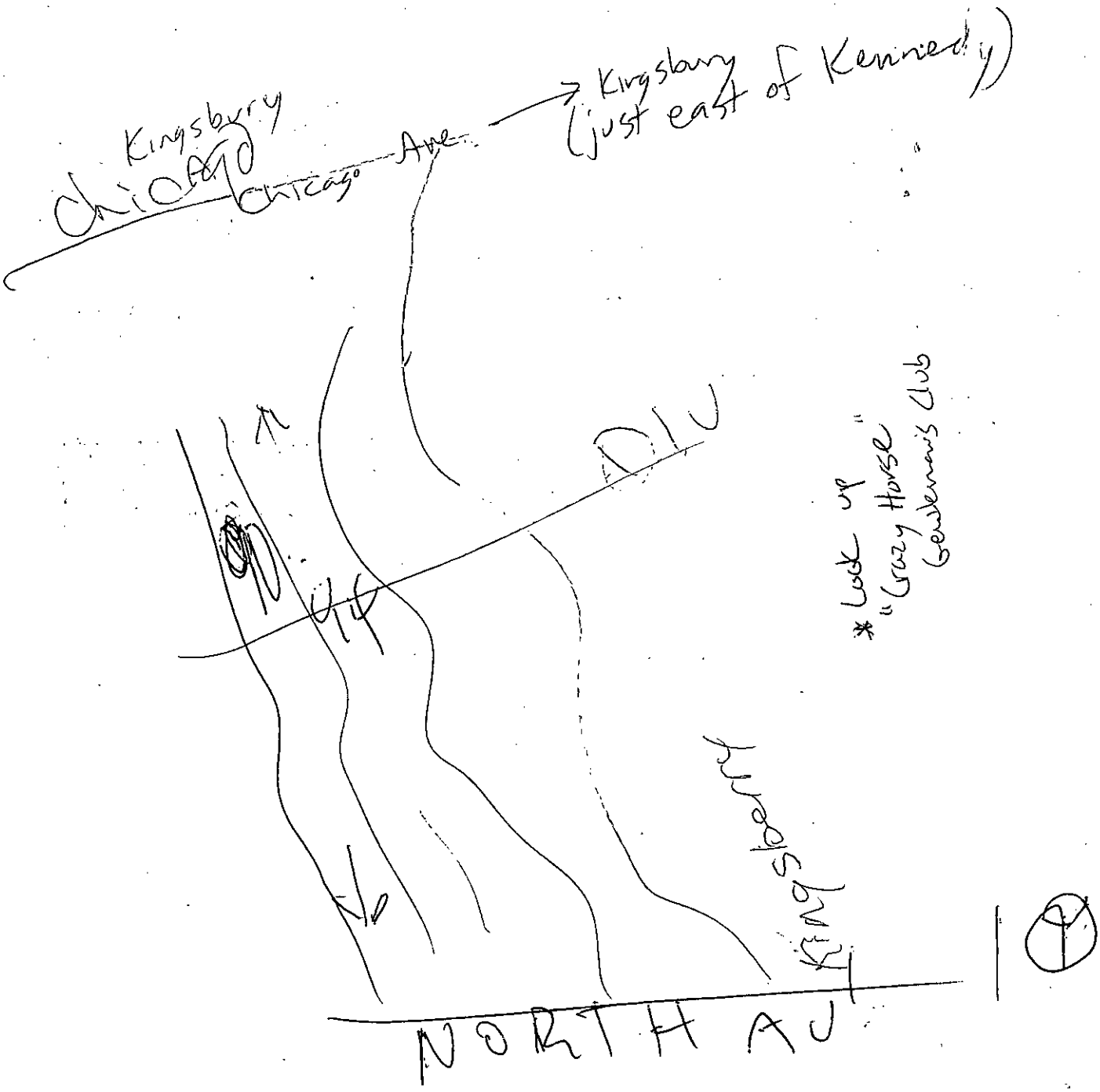
if had gotten medical tx...
if this wouldn't have happened, this would've have happened...

called Plaintiff's father with concerns that Plaintiff was unstable and alone in his apartment. On January 31, 2018, Officer John Doe #7 filed false records charging Plaintiff with escape. On February 4, 2018, Plaintiff was arrested for criminal damage to property and aggravated battery and was again detained at Cook County Jail, "now in a full state of psychosis."

As in his original complaint, Plaintiff is again claiming that Defendants failed to adequately treat his mental health condition by not securing and/or performing inpatient psychiatric hospitalization on his behalf, leading ultimately to his commission of additional crimes. The Fourteenth Amendment's Due Process Clause governs medical care claims brought by pretrial detainees. *See Miranda v. County of Lake*, 900 F.3d 335, 352-54 (7th Cir. 2018). To state a claim, a pre-trial detainee must allege that he was suffering from a serious medical need and that Jail officials acted with the requisite mental state, meaning: (1) acted knowingly (or perhaps recklessly) when considering the consequences of how they treated (or did not treat) the medical condition; and (2) whether the medical treatment was objectively unreasonable. *Id.* at 353-54. On the first element, mere negligence is not enough to state a pretrial-detention medical-care claim. *Id.* at 353. The second element is an objective inquiry into the reasonableness of the treatment.

The amended complaint cures one of the defects identified in the Court's original screening order – Plaintiff now names as Defendants (many in John/Jane Doe form) those persons that were personally involved in his care, and he has described how each was involved. But it fails to cure the second defect identified by the Court – the allegations are still inadequate on the mental-state element. The wrongdoing alleged in the amended complaint largely mirrors that of the original complaint, aside from now being tied to individually named Defendants. As the Court previously found, the allegations suggest, at the very most, negligence in how the various Jail officials acted, which is not enough to state a viable due process claim. Rather, the actions of the Cook County defendants, appear to reflect attentiveness and concern for Plaintiff's situation: they evaluated Plaintiff, appreciated the extent of his mental illness by recommending inpatient hospitalization, transported him to the hospital, and then upon his discharge, contacted his father. With respect to the Mt. Sinai defendants, once they saw Plaintiff he was out on bond, *i.e.*, no longer a detainee of the government, and thus their care decisions do not give rise to a claim for violation of Plaintiff's constitutional rights. A person under electronic monitoring ("house arrest") does not have a federal constitutional right to medical treatment. *See Hubbard v. Cope*, 2008 WL 2410856, at *3 (S.D. Ill. June 11, 2008); *DeShaney v. Winnebago Co. Dept. of Soc. Servs.*, 489 U.S. 189, 200 (1989) (explaining that the government's "affirmative duty to protect arises not from [its] knowledge of the individual's predicament or from its expression of intent to help him, but from the limitation which it has placed on his freedom to act on his own behalf."). There are no allegations in the amended complaint suggesting that Plaintiff's "house arrest" limited his freedom to seek mental health treatment on his own.

Because Plaintiff has failed to cure a defect that led to the dismissal of his original complaint, the Court dismisses the amended complaint. The Court will give Plaintiff one final opportunity to submit an amended complaint that states a claim in light of the principles discussed in this order. If Plaintiff believes he can cure the defects that led to dismissal, he may submit a second amended complaint by the date set forth above. Any second amended complaint must be submitted on the Court's required form. *See* Local Rule 81.1. Any second amended complaint also must comport with Federal Rule of Civil Procedure 11; Rule 11 provides that by signing a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pleading, a party represents to the Court that his claims are warranted by existing law and that the factual contentions have evidentiary support or likely will have evidentiary support after further investigation. Fed. R. Civ. P. 11(b). Plaintiff must write both the case number and the judge's name on the second amended complaint, sign it, and return it to the Prisoner Correspondent. Plaintiff is cautioned that an amended pleading supersedes the original complaint and must stand complete on its own. Therefore, all allegations against all defendants must be set forth in the second amended complaint without reference to the prior complaints. Any documents Plaintiff wants the Court to consider in its threshold review of the second amended complaint also must be attached. Plaintiff is advised to keep a copy for his files.

Date: 10/15/2019

MATTHEW F. KENNELLY
United States District Judge

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Jeffrey Dean Ferguson (#201810122076), Plaintiff,	)	
	)	Case No. 19 C 4607
v.	)	
	)	Judge Matthew F. Kennelly
Cook County Correctional Facility/Cermak, and Mt. Sinai Hosp., Defendants.	)	

ORDER

* motion to reconsider d/t:

The Court grants Plaintiff's application to proceed *in forma pauperis* [3]. The trust fund officer at Plaintiff's place of incarceration is authorized to immediately deduct $16.67 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee and to continue making monthly deductions in accordance with this order. The Clerk shall send a copy of this order electronically to the Supervisor of Inmate Trust Fund Accounts at the Cook County Jail and to the court's fiscal department. Summonses will not issue at this time, as the Court dismisses Plaintiff's complaint [1] for failure to state a federal claim. By 9/9/2019, Plaintiff may submit (1) an amended complaint and (2) a completed USM-285 service form for each defendant named in the amended complaint. If Plaintiff fails to comply, the Court will dismiss this case for failure to state a claim. The Clerk is directed to send Plaintiff an amended civil rights complaint form, a blank USM-285 form and instructions, and a copy of this order. Plaintiff must promptly submit a change-of address notification if he is transferred to another facility. Failure to do so may lead to dismissal of this action for want of prosecution and failure to comply with a court order. Plaintiff's motion for attorney representation [4] is denied without prejudice to renewal if and when Plaintiff files a viable amended complaint.

STATEMENT

Pro se Plaintiff Jeffrey Dean Ferguson, a detainee at Cook County Jail, has filed a lawsuit under 42 U.S.C. § 1983, claiming that he received improper medical care at the Jail. Plaintiff's application for leave to proceed *in forma pauperis* demonstrates that he has insufficient funds in his jail trust account to prepay the full filing fee, so the Court grants the application. Under 28 U.S.C. § 1915(b)(1)-(2), the Court orders: (1) the trust fund officer at Plaintiff's place of incarceration is authorized to immediately deduct $16.67 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee; and (2) Plaintiff is to pay (and the facility having custody of him is to automatically remit to) the Clerk twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The Court directs the Clerk to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify Plaintiff's name and the case number assigned to this case.

The Court has reviewed Plaintiff's complaint under 28 U.S.C. § 1915A to determine if it is frivolous or fails to state a claim upon which relief may be granted. In doing so, the Court reads the complaint liberally and takes Plaintiff's factual allegations as true. Plaintiff alleges that from approximately mid-December 2017 to early February 2018, he was having symptoms related to bipolar disorder, including paranoia, delusions, and mania. His symptoms elevated and, on January 20, 2018, he committed arson. When he arrived at Cook County Jail, he was sent to the facility's medical unit, Cermak, because he was obviously psychotic. Despite his condition, he was bonded out on January 24, 2018, for $100.00 and ordered to be placed on house arrest with an electronic monitor. Cermak/CCDOC wrote orders stating Plaintiff required involuntary inpatient psychiatric hospitalization. "The inpatient certificate stated that [Plaintiff] was 'currently manic, unable to provide for his own basic needs, labile, grandiose, delusional, and making threatening statements to peers and staff' . . . [and] was 'a danger to self and others.'" Plaintiff was taken to Mt. Sinai Hospital by the Cook County Sheriff's Department, where an emergency room physician briefly assessed him and opined that he was fine and just needed to take his medications. Plaintiff was then taken to his apartment and placed on an electronic monitor by the Sheriff's Department. That same day, Cermak/CCDOC telephoned Plaintiff's parents in Indiana and advised them of their concerns about Plaintiff because they knew he was actively psychotic and unstable. However, no further action was taken. Plaintiff was still a danger to himself and others, and within nine days, he was charged with three additional felonies. He has been in jail since then and was finally stabilized after spending an additional three weeks in Cermak. Plaintiff seeks monetary damages for medical malpractice and negligence and, as defendants, Plaintiff names Cook County Correctional Facility/Cermak, and Mt. Sinai Hospital.

Even construing Plaintiff's complaint liberally and in the light most favorable to him, the Court cannot make out a cognizable federal claim in his allegations. As best as the Court can discern, the crux of Plaintiff's claim is that defendants should have involuntarily committed him and thereby prevented him from committing additional crimes. However, "[d]ue process protects people from being unlawfully restrained; it provides no right to be restrained, lawfully or otherwise." *Collignon v. Milwaukee Cty.*, 163 F.3d 982, 987 (7th Cir. 1998); *Wilson v. Formigoni*, 42 F.3d 1060, 1065–66 (7th Cir. 1994) ("there is no constitutional right to be deprived of liberty—there is no right to be imprisoned, and none to be involuntarily committed in a mental health facility"); *cf. Archie v. City of Racine*, 847 F.2d 1211, 1221 (7th Cir. 1988) (*en banc*) ("[T]he Due Process Clause does not require the state to imprison [insane persons] or protect its citizens from them.").

Because he is a pre-trial detainee, any federal claim Plaintiff might have arising out of how his psychiatric condition was managed at Cook County Jail is governed by the Due Process Clause of the Fourteenth Amendment. *See Miranda v. County of Lake*, 900 F.3d 335, 353-54 (7th Cir. 2018). To establish a medical care claim under the Fourteenth Amendment, Plaintiff's allegations must make a plausible showing that (1) he has a serious medical condition (an element the court finds to have been sufficiently alleged), and (2) the defendant's conduct with respect to those conditions is objectively unreasonable. *Smith v. Dart*, 803 F.3d 304, 309-10 (7th Cir. 2015). The second part of the test requires "more than negligence but less than subjective intent—something akin to reckless disregard." *Miranda,* 900 F.3d at 353-54. In this case, however, Plaintiff's allegations suggest, at most, medical malpractice or negligence—which is precisely how Plaintiff

frames his own claims, *see* Dkt 1. at 7—thus, it is clear that Plaintiff has not stated a viable § 1983 claim. *See Dixon v. Cty. of Cook*, 819 F.3d 343, 350 (7th Cir. 2016) (establishing liability under § 1983, "requires the plaintiff to be able to prove facts from which something more than negligence or even medical malpractice can be inferred").

In addition, "to be liable under § 1983, an individual Defendant must have caused or participated in the . . . deprivation [of federal right]." *Pepper v. Village of Oak Park*, 430 F.3d 809, 810 (7th Cir. 2005). To state a claim against a particular defendant, Plaintiff must allege facts from which it may be reasonably inferred that the defendant had some personal involvement in the alleged deprivation. *Cf. Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995) ("To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right" * * * [T]he defendant "'must know about the [condition/conduct] and facilitate it, approve it, condone it, or turn a blind eye . . .'") (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988)). Plaintiff's complaint fails to allege facts from which it may be reasonably inferred that any defendant was personally involved in any alleged deprivation of federal right. If Plaintiff desires to pursue a § 1983 claim, he must file an amended complaint that names as defendants individuals whom he believes deprived him of a federal right and, as to each such named defendant, the complaint must contain allegations that link specific conduct on the part of the defendant to Plaintiff's alleged deprivation of federal right.

Plaintiff is further advised that he has not named a proper defendant for a claim under 42 U.S.C. § 1983. Cook County Correctional Facility/Cermak is not a suable entity. *Manney v. Monroe*, 151 F. Supp. 2d 976, 988 (N.D. Ill. 2001) ("Cermak is a department within Cook County, with no legal existence, and, therefore, is not a suable entity."). Although Cook County could be a proper defendant in a § 1983 action, Plaintiff's complaint contains no allegations that would support a municipal liability claim (i.e., that the deprivation of federal right he allegedly suffered was the result of official policy, practice or custom of the municipality, *see Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 690 (1978)).

The Court cautions Plaintiff that an amended complaint supersedes prior complaints and must stand complete on its own. If accepted, the amended complaint would control this case, and the court will look only to the amended complaint, and not to any prior complaints, when determining the claims and parties in this action. Plaintiff must therefore include all the claims he seeks to bring and list all the parties he seeks to sue in this case in the amended complaint. If there are exhibits he wants the court to consider when conducting its initial review, he should include them with the amended complaint. Any amended complaint must be submitted on the Court's required form. *See* Local Rule 81.1. Any amended complaint also must comport with Federal Rule of Civil Procedure 11. Rule 11 provides that by signing a pleading, a party represents to the Court that his claims are warranted by existing law and that the factual contentions have evidentiary support or likely will have evidentiary support after further investigation. Fed. R. Civ. P. 11(b). The clerk will send an amended complaint form and a blank USM-285 form to the Plaintiff.

The Court instructs Plaintiff to file all future papers concerning this action with the Clerk of this Court in care of the Prisoner Correspondent. Every document submitted by Plaintiff must include a certificate of service indicating the date on which Plaintiff gave the document to prison

authorities for mailing. Any letters or other documents sent directly to a judge or that otherwise fail to comply with these instructions may be disregarded by the Court or returned to Plaintiff. Plaintiff is advised that he must promptly submit a change-of-address notification if he is transferred to another facility or released. Failure to do so may lead to dismissal of this action for failure to comply with a Court order and for want of prosecution.

Date: 8/12/2019

MATTHEW F. KENNELLY
United States District Judge