SUPREME COURT OF THE UNITED STATES

JERMEAL WHITE

V. Case No. 21-3154

DAVID DUNLAP

Application for an extension of time to file an Writ of certiorari

Now comes Petitioner Jermeal White an respectfully moves this Honorable court for an 60 day extension of time after the required due date to file a writ of certiorari in the above captioned case from the decision entered by the united states court of Appeals for the sixth circuit on January 26, 2022 for the following reasons:
Petitioner White is proceeding Pro Se the best he can in wich Petitioner is under critical circumstances, such as Petitioner can not make copies of filings before the court. Petitioner

would also need the court to send him an Pro se brief Packet in wich to file a writ of certiorari before this court, Petitioner is also going threw a great deal of harassment from Staff within the Prison inregard to this matter in wich Petitioner is trying to Prove his eight Amendment claim before this Honorable court.

Conclusion

Petitioner respectfully Prays that this court grant him an 60 day extension of time

respectfully submitted
Jermeal White
Jermeal White #A654-040
southern ohio corr facility
P.O. Box 45699
Lucasville Ohio 45699

Certificate of Service

I hereby certify that a copy of this Application for an extension of time has been sent via regular U.S. mail to the Ohio Attorney General 30 E. Broad Street, 23rd Floor Columbus Ohio 43215 this 22nd day of March 2022

respectfully submitted
Jermeal White #A654-040

NOT RECOMMENDED FOR PUBLICATION

No. 21-3154

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JERMEAL WHITE,

Plaintiff-Appellant,

v.

RONALD ERDOS, Warden, et al.,

Defendants,

and

DAVID DUNLAP,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

O R D E R

Before: WHITE, THAPAR, and READLER, Circuit Judges.

Jermeal White, a pro se Ohio prisoner, appeals the district court's grant of summary judgment to the defendant, corrections officer David Dunlap, in White's civil rights suit filed under 42 U.S.C. § 1983. White moves for the appointment of counsel and for an injunction pending appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

White's complaint alleged that Dunlap used excessive force against him "for no reason at all" by bending his wrist to the point that it popped out of place, throwing him against a hallway wall, "power walk[ing]" him to his cell, and then throwing him head-first into the cell and giving

him a "knot" on his head. He claimed an Eighth Amendment violation and sought $150,000 in damages. White raised several other claims that were dismissed at screening, a decision he did not object to or appeal here. *See White v. Erdos*, No. 1:19CV470, 2019 WL 3536598 (S.D. Ohio Aug. 2, 2019) (order).

After the parties engaged in discovery, both moved for summary judgment, and a magistrate judge recommended granting Dunlap's motion and denying White's. The magistrate judge found that White's verified complaint did not distinguish between his statements that were based on information and belief and those based on his personal knowledge, and therefore that it did not qualify as evidence for summary-judgment purposes. *White v. Erdos*, No. 1:19-CV-470, 2020 WL 7237280 (report and recommendation), at *3 (S.D. Ohio Dec. 9, 2020) (citing Fed. R. Civ. P. 56(c)(4)). In contrast, Dunlap submitted declarations by various corrections officers as well as video recordings of the use-of-force incident underlying White's claim. The magistrate judge found that Dunlap's evidence showed that he had received notification that White "was masturbating on a corrections officer," so Dunlap went to his cell, ordered him "to 'cuff up,'" and escorted him to the segregation unit. *Id.* at *2. While they were walking to the unit, White "turned toward [Dunlap], used obscene and aggressive language, and said that he was not going to the segregation unit." *Id.* Dunlap "forced [White] against the wall to gain better control over [him]" and walked him to the "unit using a procedural escort technique." *Id.* Dunlap then "pushed [White] into the [segregation unit's] strip cage where [White] refused [his] orders to face the wall" before "eventually compl[ying]." *Id.* at *3. The magistrate judge held that this "undisputed evidence shows that the uses of force by [Dunlap] occurred in response to [White's] failure to obey direct orders of the corrections officer." *Id.* at *4. The magistrate judge further noted that, although White asserted "in his 'verified' complaint that [Dunlap] used excessive force 'for no reason,' his conclusory assertion is clearly refuted by the video evidence and declarations such that no reasonable jury could believe it." *Id.*

The district court adopted the magistrate judge's recommendation over White's objections and granted Dunlap's summary judgment motion. *White v. Erdos*, No. 1:19-CV-470, 2021

WL 302456 (S.D. Ohio Jan. 29, 2021) (order). The court noted that White made general objections to the magistrate judge's assessment of the facts, which are inadequate to support rejection of the report and recommendation; that he asserted that his verified complaint should have been accepted as evidence, but that the very case he cited in support—*Cobell v. Norton*, 310 F. Supp. 2d 77 (D.D.C. 2004)—is to the contrary; and that he claimed that the video recordings supported his case, but they did not. *White*, 2021 WL 302456, at *2-3.

On appeal, White largely repeats the arguments in his objections, asserting that the district court failed to "honestly" review the videos and that his verified complaint should count as evidence for summary judgment purposes. White also contends that he was denied medical attention for his alleged injuries.

We review a district court's grant of summary judgment de novo. *Bethel v. Jenkins*, 988 F.3d 931, 937 (6th Cir. 2021). Summary judgment is appropriate when "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). In resolving a summary judgment motion, this court views the evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

An excessive-force claim under the Eighth Amendment contains both an objective and a subjective component. The objective part requires a prisoner to establish that he suffered a sufficiently serious injury; the subjective part requires proof that the defendant acted with a culpable state of mind, that is, that the defendant used force "maliciously and sadistically to cause harm" rather than "in a good-faith effort to maintain or restore discipline." *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014) (quoting *Hudson v. McMillian*, 503 U.S. 1, 7 (1992)).

The district court held that there was no genuine dispute that Dunlap acted to maintain order and not to harm White. White argues that the video evidence will show otherwise, but the district court considered that evidence, and our own review of the video confirms the district court's finding. *Cf. Ison v. Madison Local Sch. Dist. Bd. of Educ.*, 3 F.4th 887, 892 (6th Cir. 2021) ("[W]here, as here, the parties present video evidence, we 'view[] the facts in the light depicted by

the videotape.'" (citation omitted)). Furthermore, although a plaintiff can rely on a verified complaint in response to a motion for summary judgment, *King v. Harwood*, 852 F.3d 568, 577-78 (6th Cir. 2017), White's "verified" complaint failed to distinguish between allegations based on firsthand knowledge and those based merely on information and belief. His complaint, therefore, is not admissible evidence for summary judgment purposes. *See* Fed. R. Civ. P. 56(c)(4) (verified complaint "must be made on personal knowledge"). In any event, the complaint's allegation that Dunlap attacked him for no reason is conclusory and insufficient to demonstrate a genuine dispute of fact. "The purpose of summary judgment is to determine whether a material fact dispute exists for the jury to resolve, 'not to replace conclusory allegations of the complaint or answer with conclusory allegations [in] an affidavit,' verified complaint, or deposition." *Reedy v. West*, 988 F.3d 907, 914 (6th Cir. 2021) (alteration in original) (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)). White also claims that he was denied medical attention and that the nurse lied about him, but, as the magistrate judge noted, that claim does not relate to any of the named defendants. *White v. Erdos*, No. 1:19-CV-470, 2019 WL 3220755, at *2 n.1 (S.D. Ohio July 17, 2019). In short, the district court did not err in granting summary judgment to Dunlap.

White has also moved this court to appoint him counsel and to issue an injunction transferring him to a different prison unit that is not staffed by officers with whom he is in litigation. Yet there is no constitutional right to be appointed counsel in a civil case, *see Gabbard v. F.A.A.*, 532 F.3d 563, 567 (6th Cir. 2008), and White cites no exceptional circumstances that would justify appointment in his appeal here, *see Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993). And given that one factor in determining whether to grant an injunction pending appeal is "whether the applicant is likely to succeed on the merits of the appeal," *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep't*, 984 F.3d 477, 479 (6th Cir. 2020), the above analysis forecloses White's motion.

Accordingly, we **DENY** White's motion for the appointment of counsel and for an injunction pending appeal and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk