NONPRECEDENTIAL DISPOSITION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 March 28, 2023*
Decided April 3, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2679

DON COLLINS,
Plaintiff-Appellant,

v.

ROB JEFFREYS, et al.,
Defendants-Appellees.

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

No. 20 C 6555

John Z. Lee,
Judge.

ORDER

Don Collins, a former Illinois prisoner, appeals the dismissal of his complaint alleging that prison staff failed to protect him from an attack by another prisoner. At screening the district judge dismissed the complaint for failure to state a claim. Because

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* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the appeal is frivolous. FED. R. APP. P. 34(a)(2)(A).

Collins did not allege that any defendant knew the assailant was likely to target him, we affirm.

We accept Collins's allegations as true and draw all reasonable inferences in his favor. *See Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). Collins is an older white man who was formerly incarcerated at the Joliet Treatment Center in Illinois. (Although Collins initiated this suit while incarcerated, he now is on parole.) Shortly after arriving at the prison, Collins was informed that a "known enemy" was in his dorm. Collins later moved to a different wing and was told by a defendant guard that he had two more unidentified enemies in the prison.

Soon thereafter, a prisoner Collins identifies as "C.W." attacked him in a common area, knocking him unconscious and breaking several teeth and facial bones. According to Collins, C.W. has a "well known history" of violence against prisoners who are older white men—though Collins does not specify who knew this or how.

Collins sued several prison officials for violating his Eighth Amendment rights by disregarding the substantial risk of harm that C.W. posed to him. *See* 42 U.S.C. § 1983. The judge screened Collins's complaint, *see* 28 U.S.C. § 1915A(a), and dismissed it without prejudice for failure to state a claim. Although prisoners can state a claim for the prison staff's failure to protect them from a prisoner known to target others with a particular characteristic (e.g., race), *Brown v. Budz*, 398 F.3d 904, 915 (7th Cir. 2005), the judge determined that Collins did not allege that any named defendant knew of C.W.'s propensity to attack older white men.

Collins amended his complaint but did so in such a disjointed, lengthy fashion that the judge could not determine whether any prison official may potentially be liable. The judge dismissed the amended complaint for failure to state a claim. But given the seriousness of the attack and Collins's demonstrated difficulty in articulating his claim, the judge recruited counsel for Collins. (The judge ultimately permitted counsel to withdraw after she represented that filing a second amended complaint would be inconsistent with Rule 11 of the Federal Rules of Civil Procedure.)

Collins filed his second amended complaint pro se. He added a new theory of deliberate indifference—that the prison failed to provide adequate mental-health care or to assess prisoners' security threats. The judge dismissed this complaint after determining that Collins still did not allege how any prison official knew about C.W.'s violent propensities. Having permitted Collins multiple opportunities to amend his

complaint, the judge determined that further amendment would be futile and directed that the dismissal be with prejudice.

On appeal Collins argues that the judge ignored an allegation that creates an inference that the defendants knew about C.W.'s propensity to attack older white inmates. According to Collins, information regarding C.W.'s likelihood to target him *could* have been in the database used by the prison to track security threats, and this information *could* have been accessed by the defendants. But these allegations merely say that the defendants potentially harmed Collins—not that they did—and allegations that are "merely consistent with" liability are insufficient to state a claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

Next, Collins asserts that the judge should have inferred that prison staff knew of the substantial risk that C.W. posed to him, given his known "enemies." Collins, however, did not allege any ties between C.W. and these enemies. A substantial risk requires more than a generalized risk of harm. *Thomas v. Dart*, 39 F.4th 835, 843 (7th Cir. 2022); *see Brown*, 398 F.3d at 915. Collins's alleged risk of harm—the threat that Collins had unnamed enemies somewhere in the prison—is too generalized to state a claim.

Finally, Collins argues that the unsafe nature of his former prison—a correctional facility that lacks adequate mental-health services—put the defendants on notice that any prisoner was at risk of a violent attack from untreated prisoners. But as the judge appropriately concluded, a generalized risk of violence is insufficient to state a deliberate-indifference claim. *Thomas*, 39 F.4th at 843; *Weiss v. Cooley*, 230 F.3d 1027, 1032 (7th Cir. 2000).

AFFIRMED

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

DON COLLINS,	)	
	)	
Plaintiff,	)	
	)	**No. 20 C 6555**
v.	)	
	)	**Judge John Z. Lee**
ROB JEFFREYS, ANDREA TACK, DAIDRA MARANO, and BRIAN SENODENOS,	)	
	)	
Defendants.	)	

ORDER

Plaintiff Don Collins, a former prisoner at the Joliet Treatment Center ("JTC"), has filed this action against four correctional officials under 42 U.S.C. § 1983, arising out of injuries he suffered at the hands of another JTC inmate. The Court has reviewed Collins's Second Amended Complaint, ECF No. 40 ("SAC"), pursuant to 28 U.S.C. § 1915A. For the reasons stated below, the SAC is dismissed with prejudice for failure to state a claim. This dismissal is one of Collins's three allotted "strikes" under 28 U.S.C. § 1915(g). Collins's "Motion for Indigent Status," ECF No. 45, is denied as moot. The Clerk is directed to enter final judgment. Civil case terminated.

STATEMENT

Collins alleges that four prison officials, including Illinois Department of Corrections ("IDOC") Director Rob Jeffreys, former JTC Warden Andrea Tack, then-JTC Clinical Services psychologist Daidra Marano, and then-JTC Internal Affairs officer Lieutenant Brian Senodenos, failed to protect him from an attack by another

inmate that occurred on November 9, 2018. SAC at 1. The Court twice dismissed prior versions of Collins's complaint for failure to state a claim and recruited counsel to assist him. *See* 1/4/21 Order, ECF No. 7; 6/8/21 Order, ECF No. 15. The Court permitted recruited counsel to withdraw after she determined she could not file a second amended complaint consistent with her obligations under Rule 11. *See* 10/21/21 Order, ECF No. 25.

The Court dismissed the case after Collins failed to timely file a second amended complaint, *see* 2/1/22 Order, ECF No. 31, but reopened it because mailing issues prevented the timely receipt of the pleading, *see* 3/10/22 Order, ECF No. 35. Collins then submitted a different version of his second amended complaint, which is now before the Court for screening under 28 U.S.C. § 1915A.

Where a *pro se* plaintiff files a civil action applying for leave to proceed *in forma pauperis* and seeking redress from a governmental entity or officer or employee of a governmental entity, the Court is required to conduct an initial review of the complaint to determine whether the claims are frivolous or malicious, fail to state a claim on which relief can be granted, or seek monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1018 (7th Cir. 2013).

Courts screen prisoner litigation claims under the same standard that is used to review Federal Rule of Civil Procedure 12(b)(6) motions to dismiss. *See Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011). A motion under Rule 12(b)(6) challenges the sufficiency of the complaint. *See Hallinan v. Fraternal Order of Police of Chi. Lodge*

No. 7, 570 F.3d 811, 820 (7th Cir. 2009). And, under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Put differently, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true." *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665–66 (7th Cir. 2013). Courts also construe *pro se* complaints liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam).

With these principles in mind, the Court turns to Collins's case. While Collins's description of the attack he suffered is clear, *see* SAC at 2, his allegations concerning Defendants are muddled, and he does not clearly establish why he believes any of them were responsible for the attack. In dismissing Collins's amended complaint, the Court observed that it was so garbled that it was difficult to tell whether any prison official may be liable. *See* 6/8/21 Order, ECF No. 15. Collins has not cured this problem. The SAC, like its predecessor, falls short of Rule 8's requirement of a "short and plain statement" of the claims entitling Collins to relief. Fed. R. Civ. P. 8(a)(2). Collins has continued padding his complaint with facts and legal theories of questionable relevance, which makes it almost unintelligible. *See Kadamovas v.*

up his hand, and made eye contact through a window with a female JTC officer who was in the foyer outside the dayroom. *Id.* C.W. continued beating Collins, and at some point he passed out. *Id.* The next thing Collins remembers is being placed in a wheelchair and transported to a hospital. *Id.* at 3. Collins, who was 65 at the time, suffered multiple facial fractures, a broken jaw, and multiple loose or broken teeth. *Id.* at 3, 19.

The Eighth Amendment, which prohibits cruel or unusual punishment, "protect[s] prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). But "a prison official does not violate the Eighth Amendment every time an inmate gets attacked by another inmate." *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008). "Prisons, after all, are dangerous places often full of people who have demonstrated aggression." *Id.* Rather, a prison official is liable for failure to protect an inmate "only if the official 'knows of and disregards an excessive risk to inmate health and safety.'" *Gevas v. McLaughlin*, 798 F.3d 475, 480 (7th Cir. 2015) (quoting *Farmer*, 511 U.S. at 837)). In other words, liability requires that the official subjectively knew of the risk and failed to take reasonable measures to abate it. *Balsewicz v. Pawlyk*, 963 F.3d 650, 654–55 (7th Cir. 2020).

The beating Collins describes amounts to an objectively serious harm for purposes of this screening. *See id.* at 654 (collecting cases standing for the proposition that inmate-on-inmate violence "is simply not 'part of the penalty that criminal offenders pay for their offenses against society'") (internal citations omitted). However, as in his prior complaints, Collins has not alleged sufficient facts to raise a

plausible inference that any of the named defendants were deliberately indifferent to that serious risk of harm.

First, Collins refers to filings made by himself and others in *Rasho v. Walker*, No. 07-cv-1298 (C.D. Ill.), a class action lawsuit challenging the adequacy of mental health services provided to mentally ill prisoners at IDOC facilities. SAC at 4. He also points to a letter filed by another prisoner at JTC stating that mental health professionals defer to correctional officers, and that officers need to be willing to help implement changes to mental health care. *See* Letter, *Rasho*, ECF No. 2461, and 11/6/18 Text Order. Collins also directs the Court to his own filings in *Rasho*, including a motion he filed in April 2019 concerning threats made against him by a different inmate to hire someone to hurt him. *See* Motion, *Rasho*, ECF No. 2631, and 4/22/19 Text Order. Collins contends that these materials show a "small pattern of unsupervised seriously mentally & violently ill prisoners." SAC at 4. Finally, Collins points to a report showing that treatment and conditions at JTC are generally inadequate and unsafe. *Id.* at 5. But it is unclear how *any* of these materials, at least one of which describes an incident that took place *after* Collins was beaten by C.W., supports his claims in the present case. While Collins's allegations shed light on potentially problematic conditions at JTC, Collins has not alleged facts indicating that Defendants themselves were aware of a widespread pattern of violence at JTC, but willfully disregarded it.

Collins further points to what he alleges is a portion of the prisoner manual at the JTC, which states that the facility provides a "safe and secure environment." *Id.*

2018 WL 928287, at *3 (S.D. Ind. Feb. 16, 2018) ("[P]rison officials' failure to separate inmates based on differentiated security risks may be part of a deliberate indifference claim, but that typically is not itself a facial violation of the Eighth Amendment.") (internal citations and quotations omitted). As the Court previously explained, because prisons are inherently dangerous places, a deliberate indifference claim cannot be predicated on a generalized risk of violence like Collins alleges here. *See Weiss*, 230 F.3d at 1032.

In dismissing Collins's prior complaints, the Court observed that a deliberate indifference claim may arise if correctional officers know that a specific inmate posed a heightened risk of assault to a certain type of inmate, but disregarded that risk. *See Brown v. Budz*, 398 F.3d 904 (7th Cir. 2005) (allowing claim to proceed where plaintiff alleged that inmate who attacked him had a known propensity of attacking Caucasians, but was allowed unsupervised access to a dayroom where Caucasian inmates would congregate). Collins's reference to C.W.'s prior attack on a white, older inmate indicates that he is attempting to pursue this type of claim. But despite the Court's instructions, Collins has not alleged any facts indicating that these Defendants knew of C.W.'s propensity for violence toward inmates like Plaintiff, but failed to take adequate steps to address that risk.

In this regard, liability under § 1983 requires that a plaintiff allege facts raising an inference that each named defendant was personally responsible for the alleged violation of his rights. *Perez v. Fenoglio*, 792 F.3d 768, 781 (7th Cir. 2015). This means that in order to recover damages against a prison official acting in a

an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).

Date: 8/25/22 /s/ John Z. Lee