[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16639
Non-Argument Calendar

D.C. Docket No. 5:16-cv-00495-WTH-PRL

MAURICE HUNT,

Plaintiff - Appellant,

versus

WARDEN,
Complex Warden,
L. SHULTZ,
Associate Warden,
FNU MILLER,
Associate Warden,
JOHN DOE, #I,
Facility Captain,
FNU BRADFIELD,
Lieutenant, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(August 31, 2018)

Before TJOFLAT, NEWSOM, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Maurice Hunt ("Plaintiff") is a federal prisoner with a disability that requires him to use a wheelchair. Plaintiff alleges that, in 2016, prison officials at the Federal Correctional Complex, Coleman ("FCC Coleman"), a federal penitentiary in Florida, violated the Americans with Disabilities Act ("ADA") and the Eighth Amendment by transporting him in a non-wheelchair-accessible van without a seatbelt and by placing him in a non-handicap-accessible cell for two weeks. The district court dismissed Plaintiff's complaint for failure to state a claim. After careful consideration, we affirm.

I. BACKGROUND

A. Factual Background

Plaintiff's amended complaint alleges the following facts. Plaintiff is a federal prisoner with a disability that requires him to use a wheelchair. On April 26, 2016, the United States Marshals Service transported Plaintiff by plane to Orlando, Florida. Warden T. Jarvis's transportation team met Plaintiff at the airport to take him to FCC Coleman. The transportation team arrived with both a wheelchair-accessible van and a non-wheelchair-accessible van, but did not bring a wheelchair and was not allowed to take the Marshals Services' wheelchair that Plaintiff had used on the plane. As a result, Plaintiff was placed in the non-

wheelchair-accessible van. In the van, Plaintiff was seated on a typical bench seat with his ankles shackled and his handcuffs affixed to a belly chain. The van did not have seat belts, and there was nothing in the van for Plaintiff to hold onto or use to brace himself. Despite Plaintiffs protests that he was not properly secured, the transportation team drove to FCC Coleman anyway. During the drive, the van made "swift" and "sharp" turns causing Plaintiff to be "violently" thrown from side-to-side. The drive took approximately one hour to one hour and forty-five minutes. The drive caused Plaintiff neck and back pain, mental and emotional distress, and chronic nightmares.

Once at FCC Coleman, Plaintiff was placed in a non-handicap-accessible holding cell with only his wheelchair and without a walker. Plaintiff's Medical Duty Status Sheet indicated that Plaintiff required a handicap-accessible cell, and Plaintiff showed the Sheet to Lieutenant Bradfield and asked to be put in such a cell. Approximately one hour later, prison officials moved Plaintiff to a non-handicap-accessible cell. The cell did not have a handicap-accessible toilet, meaning there were no grab bars or hand rails around the toilet. When he was placed in the cell, Plaintiff told prison officials that he needed to be in a handicap-accessible cell. Prison officials told Plaintiff to talk to the warden. During the warden's rounds on April 29, Plaintiff showed the warden his Medical Duty Status Sheet and reiterated that he needed to be in a handicap-accessible cell. Plaintiff

was not moved to a handicap-accessible cell and was not given the opportunity to use a handicap-accessible shower.

From around May 2 to May 5, Plaintiff was moved to a "hard cell." The cell was not handicap-accessible and had a large concrete slab in the center that prevented Plaintiff's wheelchair "from moving in either direction." Plaintiff remained there for several days, but was eventually placed back in a normal non-handicap-accessible cell. Prison officials later transferred Plaintiff to a handicap-accessible cell and provided him a walker.

In total, Plaintiff spent fourteen days in a non-handicap-accessible cell without access to a walker, a handicap-accessible toilet, or a handicap-accessible shower. Plaintiff suffered back pain from using a non-handicap-accessible toilet. He also suffered mental and emotional distress, including suicidal thoughts, from his humiliation.

B. Procedural Background

Plaintiff brought this suit in the United States District Court for the Middle District of Florida against Warden T. Jarvis, Associate Warden L. Shultz, Associate Warden Miller, Lieutenant Bradfield, and five John Does that work at FCC Coleman ("Defendants"). Plaintiff's amended complaint alleges that, by engaging in the conduct described above, Defendants violated Titles I and II of the

ADA and the Eighth and Fourteenth Amendments of the United States Constitution.[1]

The district court dismissed Plaintiff's complaint *sua sponte* under 28 U.S.C. § 1915A, which states that a court shall dismiss a complaint brought by a prisoner against "a government entity or officer or employee of a governmental entity" if the prisoner's complaint "fails to state a claim upon which relief may be granted." The court dismissed Plaintiff's claims under the ADA because that statute does not apply to individual persons or the federal government. The court also concluded that Defendants' conduct in transporting and housing Plaintiff did not violate Plaintiff's Eighth Amendment rights. Finally, the court held that, even if Defendants had violated Plaintiff's Eighth Amendment rights, Plaintiff would not be able to recover damages under 42 U.S.C. § 1997e(e) because Plaintiff's physical injuries were *de minimis*. Plaintiff brought this appeal, arguing that the District Court did not write its own opinion and that his complaint stated claims under both the ADA and the Eighth Amendment.[2]

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[1] Plaintiff's Eighth Amendment claims constitute *Bivens* claims. *See generally Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971); *Carlson v. Green*, 446 U.S. 14 (1980) (holding that individuals can bring *Bivens* claims for violations of the Eighth Amendment).

[2] On appeal, Plaintiff does not mention the Fourteenth Amendment and does not challenge the district court's determination that he cannot recover damages under 42 U.S.C. § 1997e(e) because he did not suffer more than *de minimis* physical injuries. Thus, Plaintiff has abandoned both issues. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("While we read briefs

II. STANDARD OF REVIEW

We review *de novo* a district court's *sua sponte* dismissal under 28 U.S.C. § 1915A. *Waldman v. Conway*, 871 F.3d 1283, 1289 (11th Cir. 2017). To avoid dismissal for failure to state a claim, 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 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* To make that determination, we take Plaintiff's factual allegations as true and view them in the light most favorable to him. *Jones v. Fla. Parole Comm'n*, 787 F.3d 1105, 1106–07 (11th Cir. 2015). And because Plaintiff is proceeding *pro se*, we liberally construe his complaint. *Id.*

III. DISCUSSION

A. The District Court's Opinion

Plaintiff first argues that the district court did not properly review his complaint and did not write an independent and impartial decision. Plaintiff contends that, because the district court's opinion discussed how freely Plaintiff was able to move in his wheelchair while in the "hard cell," the opinion must have

filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citation omitted)).

been written by someone working for FCC Coleman that had firsthand knowledge of the conditions of Plaintiff's detention.

But Plaintiff misreads the district court's opinion. The district court took the facts stated in Plaintiff's complaint as true and described how the hard cell "limited [Plaintiff's] ability to move in his wheelchair" and that "*besides his limited time in the 'hard cell,'* Plaintiff was able to maneuver his wheelchair." (Emphasis added.) The district court's description was based squarely on the allegations in Plaintiff's complaint. Further, unless there is evidence to the contrary, we assume that the district court authored the opinion. *Cf. Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1249 (11th Cir. 2015) (assuming that the district court properly reviewed objections made to a magistrate's recommendations); *Funchess v. Wainwright*, 772 F.2d 683, 694 (11th Cir. 1985) ("In the absence of some affirmative indication to the contrary, we assume all courts base rulings upon a review of the entire record."). And Plaintiff offers no evidence that suggests otherwise. Thus, we conclude that the district court wrote the opinion.

B. Americans with Disabilities Act Claim

Plaintiff's complaint alleged that Defendants' transportation of him in a non-wheelchair-accessible van and housing him in a non-handicap-accessible cell for two weeks violated Titles I and II of the ADA. Plaintiff's allegations, however, fail to state a claim under the ADA. Title I of the ADA applies only to

employment, and none of Plaintiff's allegations involve employment. *See* 42 U.S.C. § 12112(a) (prohibiting discrimination "in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment"); *Albra v. Advan, Inc.*, 490 F.3d 826, 829–30 (11th Cir. 2007) (describing how Title I "prohibits discrimination on account of disability in employment").

Plaintiff also does not state a claim under Title II of the ADA. Although Plaintiff does not specify whether he is suing Defendants in their individual or official capacity, Plaintiff could not maintain a suit under either circumstance. "Only public entities are liable for violations of Title II of the ADA." *Edison v. Douberly*, 604 F.3d 1307, 1308 (11th Cir. 2010); *see* 42 U.S.C. § 12132 ("Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."). In their individual capacities, Defendants are not public entities and cannot be held liable under Title II. *Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98, 107 (2d Cir. 2001) (holding that defendants cannot be sued in their individual capacities for violating Title II of the ADA); *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n.8 (8th Cir. 1999) (en

banc) ("'[P]ublic entity' . . . . as it is defined within the statute, does not include individuals."). *Cf. Mason v. Stallings*, 82 F.3d 1007, 1009 (11th Cir. 1996) (holding that there is no individual liability under Title I of the ADA). And, if Plaintiff is suing Defendants in their official capacity, then Plaintiff's suit is actually against Defendants' employer, the Federal Department of Corrections. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). The Federal Department of Corrections is not a public entity under the ADA. *See* 42 U.S.C. § 12131(1) (defining "public entity" to mean "any State or local government," "any department, agency, special purpose district, or other instrumentality of a State or States or local government," and "the National Railroad Passenger Corporation, and any commuter authority"); *Cellular Phone Taskforce v. FCC*, 217 F.3d 72, 73 (2d Cir. 2000) ("Title II of the ADA is not applicable to the federal government."). Thus, Defendants cannot be sued in their individual or official capacities for violating Title II of the ADA.

C. Eighth Amendment Claims

"To establish an Eighth Amendment claim of deliberate indifference, [a plaintiff] must allege facts sufficient to show (1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation." *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016) (internal quotation marks omitted). For the first element, we apply an objective standard to determine whether Plaintiff

has "allege[d] conditions that were sufficiently serious to violate the Eighth Amendment, i.e., conditions that were extreme and posed an unreasonable risk of serious injury to his future health or safety." *Id.* The second element, deliberate indifference, has three components: "(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *Farrow v. West*, 320 F.3d 1235, 1245 (11th Cir. 2003) (internal quotation marks omitted).

Plaintiff alleges that Defendants violated the Eighth Amendment's prohibition on cruel and unusual punishment by transporting him to FCC Coleman in a non-wheelchair accessible van without a seatbelt and by housing him in non-handicap-accessible cells for two weeks. The district court concluded that Defendants' conduct was not unconstitutional because Defendants' actions did not pose a substantial risk of serious harm and were no more than mere negligence.

We agree with the district court that Plaintiff's allegations do not state a claim under the Eighth Amendment. Plaintiff's allegations about Defendants' transportation of him to FCC Coleman, liberally construed and viewed in the light most favorable to him, show that he was disabled, was placed in the van without a seatbelt, had nothing to brace himself against, and was thrown from "side to side" in the van as the driver took "swift" and "sharp" turns during the drive, which lasted somewhere between an hour and an hour and forty-five minutes. Plaintiff

alleges that the trip caused "neck and back pain," "emotional and mental distress," and "chronic nightmares." Although unpleasant, these driving conditions did not pose an objectively serious risk to Plaintiff's health and safety. *See Jabbar v. Fischer*, 683 F.3d 54, 58 (2d Cir. 2012) (per curiam) ("[T]he failure to provide a seatbelt is not, in itself, sufficiently serious to constitute an Eighth Amendment violation." (internal quotation marks omitted)); *Spencer v. Knapheide Truck Equip. Co.*, 183 F.3d 902, 906 (8th Cir. 1999) (transporting prisoners "without safety restraints" does not present "a 'substantial risk of serious harm'"). In addition, Defendants' conduct in not providing a van with greater safety features does not constitute "more than ordinary lack of due care" and does not rise to something more than negligence. *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (internal quotation marks omitted).

Plaintiff's allegations that he was kept in a non-handicap-accessible cell also do not establish that Defendants violated the Eighth Amendment. Plaintiff alleges that prison officials held him in a non-handicap-accessible cell, without access to a handicap-accessible toilet and shower, for two weeks without a walker. He alleges that using a non-handicap-accessible toilet caused back pain along with mental and emotional distress, including feeling humiliated and suicidal. The Eighth Amendment does not "allow a prisoner to be exposed to an objectively unreasonable risk of serious damage to his future health," but it also "does not

mandate comfortable prisons." *Brooks v. Warden*, 800 F.3d 1295, 1303 (11th Cir. 2015) (internal quotation marks omitted). The Eighth Amendment also requires that "the conditions of confinement" meet "the evolving standards of decency that mark the progress of a maturing society." *Id.* (internal quotation marks omitted). Thus, we have held that "conditions that 'deprive inmates of the minimal civilized measure of life's necessities'" violate the Eighth Amendment. *Id.* at 1303–04 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). But "[t]he challenged condition must be 'extreme.'" *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). "[A] prisoner's mere discomfort, without more, does not offend the Eighth Amendment." *Id.* at 1295; *see also Rhodes*, 452 U.S. at 347 ("[C]onditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To 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.").

Plaintiff's allegations do not demonstrate that lack of a handicap-accessible shower, toilet, and walker, along with his confinement in the "hard cell" and other non-handicap-accessible cells, posed an unreasonable risk of serious damage to his health. Nor does Plaintiff allege that the conditions of his confinement deprived him of life's necessities, such as "basic sanitation." *See Brooks*, 800 F.3d at 1303 (quoting *Chandler v. Baird*, 926 F.2d 1057, 1065–66 (11th Cir. 1991)). Plaintiff's

complaint makes clear that he was able to use the toilet even though it was not handicap-accessible, and there is no allegation, or even suggestion, that he was unable to make use of a shower. Accordingly, the district court properly held that Plaintiff's allegations regarding the conditions of his confinement did not establish an Eighth Amendment violation.

AFFIRMED.