NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 19-2287

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DONALD J. SIMMONS,
Appellant

v.

WARDEN DAVID PIERCE; DR. MARC RICHMAN; DR. WILLIAM LYNCH; DEPARTMENT OF CORRECTIONS; CONNECTION CORRECTIONS HEALTHCARE; MATTHEW WOFFORD

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On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1-18-cv-00847)
District Judge: Honorable Colm F. Connolly

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
May 4, 2020
Before: SHWARTZ, RESTREPO and NYGAARD, Circuit Judges

(Opinion filed: May 4, 2020)

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OPINION*

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PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Donald Simmons, a prisoner proceeding pro se, appeals from the District Court's order dismissing his complaint. For the reasons that follow, we will affirm.

Simmons filed a complaint pursuant to 42 U.S.C. § 1983, which the District Court screened and dismissed under 28 U.S.C. §§ 1915(e)(2)(B) & 1915A, giving Simmons leave to amend. In his amended complaint against the Delaware Department of Corrections ("DOC"), a private healthcare provider, and several prison officials, including the prison warden, the Director of Healthcare Services at the prison, and two administrators employed by the healthcare provider, Simmons alleged that he saw a nurse, who treated him and recommended that he see a provider. Some months later, he was seen by a doctor, who provided medication and treatment for a shoulder problem. Simmons was later seen by an outside specialist. Simmons contended that he continues to suffer severe pain as a result of the DOC's failure to promptly treat his condition, which violated his Eighth Amendment rights.[1]

The District Court dismissed the amended complaint as legally frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1), stating that Simmons failed to cure the same defects that were present in the original complaint. Namely, Simmons failed to state a claim because he did not refer to "any individuals, when the alleged refusal to treat the condition occurred, or whether Plaintiff has received treatment." ECF No. 12 at 1.

[1] The amended complaint superseded the original and rendered the original complaint a "nullity." See Palakovic v. Wetzel, 854 F.3d 209, 220 (3d Cir. 2017).

The District Court also noted that the complaint referred to acts that are time-barred. This appeal ensued.

We have jurisdiction under 28 U.S.C. § 1291. We construe Simmons's pro se complaint liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). We review the order dismissing the amended complaint under the same de novo standard of review as with our review of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). "To survive a motion to dismiss, 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)). We may affirm on any basis supported by the record. Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011).

Even assuming that Simmons's claims are not barred by the statute of limitations, his amended complaint is too sparse to state a claim. To set forth a cognizable Eighth Amendment claim for inadequate medical care, a prisoner must allege (1) a serious medical need and (2) acts or omissions by prison officials that indicate deliberate indifference to that need. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A prison official is deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and fails to take reasonable steps to avoid the harm. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Liability, however, cannot be grounded solely on the doctrine of respondeat superior; the officials must have had personal involvement in the alleged

violation. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Allegations of personal involvement must be made with "appropriate particularity." Id.

Simmons failed to allege how any of the named defendants were personally involved in his medical care. Simmons claimed that he was seen by an unnamed nurse, and, after a delay of months, was also seen by an unnamed physician. Though Simmons claimed that the defendants generally were responsible for overseeing different aspects of the private healthcare provider's functions, there were no allegations that any of the defendants participated or acquiesced in the delay in treating his shoulder. In short, because Simmons did not allege personal involvement with "appropriate particularity" and the claims sound solely in respondeat superior,[2] the District Court did not err in dismissing the amended complaint for failure to state a claim.[3]

Accordingly, we will affirm the judgment of the District Court.

[2] To the extent that Simmons challenges an institutional policy under which inmates are required to obtain "prior approval" before being treated by a specialist, he has not stated how that policy might have caused the alleged constitutional violations. See Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 584 (3d Cir. 2003). As Simmons concedes, it is not clear that the delay in his treatment was caused by a failure to obtain the requisite approval.

[3] In his brief, in addition to asserting that he stated a claim, Simmons argues that the District Court should have appointed counsel to assist him. However, the District Court did not abuse its discretion in declining to appoint counsel for Simmons. See Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993).