UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TIMOTHY BERTRAM,

Plaintiff,

v.

C. SIZELOVE, et al.,

Defendants.

/

CASE NO. 1:10-cv-00583-GBC PC

ORDER FINDING CERTAIN CLAIMS COGNIZABLE AND DISMISSING CERTAIN CLAIMS

(Doc. 1)

ORDER DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

(Doc. 8)

I. Screening Requirement

Plaintiff Timothy Bertram ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The complaint in this action was filed on April 5, 2010. (Doc. 1.) On April 26, 2010, a motion for a preliminary injunction was filed, due to prison officials at California State Prison ("CSP") Sacramento and CSP Lancaster withholding his legal documents and other personal property. (Doc. 8.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that "fails to state a claim on which relief may be granted," or that "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C § 1915(e)(2)(B).

In determining whether a complaint states a claim, the Court looks to the pleading standard

under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007)).

Under section 1983, Plaintiff must demonstrate that each defendant personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 129 S. Ct. at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). "[A] complaint [that] pleads facts that are 'merely consistent with' a defendant's liability . . . 'stops short of the line between possibility and plausibility of entitlement to relief.'" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual allegations contained in a complaint, a court need not accept a plaintiff's legal conclusions as true. Iqbal, 129 S. Ct. at 1949. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (quoting Twombly, 550 U.S. at 555).

II. Complaint Allegations

Plaintiff is currently incarcerated at California Men's Colony in San Luis Obispo, California. The incidents alleged in the complaint occurred while Plaintiff was housed at California Correctional Institution in Tehachapi, California. Plaintiff has a medical chrono to be assigned to a lower bunk due to a seizure disorder. (Doc. 1, Comp., p. 21.)

On July 4, 2009, Plaintiff was placed in administrative segregation. After correctional officers attempted to place him in a cell with inmate Inge who refused to cell with him because of his medical condition, Plaintiff was taken to a holding cell. Defendant Sizelove approached him and said that if he was going to be a problem then Defendant would make sure that Plaintiff had nothing but problems until the day he paroled. (Id., ¶ 6.)

On July 6, 2009, Plaintiff told the psychiatric technician ("psych tech") that he needed to be moved to a bottom bunk. An unidentified correctional officer standing next to her told Plaintiff that

they were aware that he needed to be moved and were working on it, but that Plaintiff should not hold his breath. (Id., ¶ 7.) On July 9, 2009, Plaintiff asked Defendant Heinzler why he had to take a cold shower. Defendant Heinzler replied, "That[']s all I got for you," allegedly in retaliation for the housing issue. Approximately twenty minutes later, while receiving his medication from the psych tech, Plaintiff told Defendant Heinzler that he had a medical chrono and needed to be moved to a bottom bunk. Defendant Heinzler told Plainitff to submit a health care request and that he would look into the matter. Defendant Heinzlere asked the psych tech to verify the medical chrono. (Id., ¶ 8.) Later that same day, Plaintiff turned in a health care request to the psych tech and an unnamed correctional officer who was standing nearby said, "Oh! [You are] the inmate giving us problems about your housing." The correctional officer then stated "good luck" under his breath. (Id., ¶ 9.)

On July 14, 2009, at approximately 11:00 p.m., Plaintiff had a seizure and fell out of the top bunk, hitting his head and shoulder on the cement floor. (Id., ¶ 10.) Plaintiff was transported to Tehachapi Valley Healthcare Center where he was treated for a concussion and a bruised shoulder. (Id., ¶¶ 10, 13.) Plaintiff returned to the prison, was moved to the maximum security yard, and given a bottom bunk. (Id., ¶ 10.)

On July 16, 2009, Plaintiff received a copy of a rule violation report, written by Defendant Sizelove, falsely stating he refused to house with inmate Inge. (Id., ¶ 11.)

Plaintiff brings suit against Defendants C. Sizelove, J. Heinzler, and two unidentified correctional officers, in their official and individual capacities, for being deliberately indifferent to his health and safety in violation of the Eighth Amendment. (Id., ¶¶ 2-5.) He is seeking compensatory, nominal, and punitive damages. (Id., ¶¶ 17-21.)

III. Discussion

A. Eighth Amendment

A prison official's failure to provide accommodations for a disabled inmate may constitute deliberate indifference to the inmate's safety in violation of the Eighth Amendment. Frost v. Agnos, 152 F.3d 1124, 1129; see also La Faut v. Smith, 834 F.2d 389, 393 (4th Cir. 1987) (prison officials ignored the basic needs of a handicapped individual and postponed addressing those needs out of

mere convenience or apathy); Johnson v. Hardin County, Kentucky, 908 F.2d 1280, 1284 (6th Cir. 1990) (denial of crutches and other accommodations for those who are mobility-impaired); Casey v. Lewis, 834 F.Supp. 1569, 1580 (D. Ariz. 1993) (physical accommodations necessary because of disabilities); Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998) (allegation that officials denied accommodation where a leg brace was required for walking). In Frost, La Faut, Bradley, and Casey, the courts characterized the plaintiffs' failure to accommodate claim as a conditions of confinement issue. In Johnson, the Court evaluated the plaintiff's accommodation claim as an inadequate medical care issue. In any event, issues of inhumane conditions of confinement, failure to attend to medical needs, failure to provide for an inmate's safety, or some combination thereof, are appropriately scrutinized under the "deliberate indifference" standard. See Whitely v. Albers. 475 U.S. 312, 319 (1986)).

To prove a violation of the Eighth Amendment the plaintiff must "objectively show that he was deprived of something 'sufficiently serious,' and make a subjective showing that the deprivation occurred with deliberate indifference to the inmate's health or safety." Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (citations omitted). Deliberate indifference requires a showing that "prison officials were aware of a 'substantial risk of serious harm'" to an inmates health or safety and that there was no "reasonable justification for the deprivation, in spite of that risk.." Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994).

Additionally, Plaintiff may not bring suit against Defendants in their official capacity. "The Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and state officials acting in their official capacities." Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007). However, the Eleventh Amendment does not bar suits seeking damages from public officials acting in their personal capacities. Hafer v. Melo, 502 U.S. 21, 30 (1991). "Personal-capacity suits . . . seek to impose individual liability upon a government officer for actions taken under color of state law." Id. at 25.

1. Failing to Provide Bottom Bunk

Defendants were allegedly aware of Plaintiff's need to be assigned to a bottom bunk due to his medical condition and failed to act, causing him to be harmed when he had a seizure and fell out

of his bunk. This is sufficient to state a claim under the Eighth Amendment against Defendants C. Sizelove, J. Heinzler, and two unidentified correctional officers.[1]

2. Cold Shower

To the extent that Plaintiff attempts to allege a violation of the Eighth Amendment due to the shower incident on July 9, 2009, a single incident fails to rise to the level of a constitutional violation. Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2006).

B. First Amendment Retaliation

Although Plaintiff does not bring suit alleging a violation of the First Amendment, he does make several references that the actions of Defendants were in retaliation for his need to be placed on a bottom bunk. A viable claim of retaliation in violation of the First Amendment consists of five elements: "(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonable advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005). To the extent that Plaintiff may be attempting to bring a retaliation claim, he fails to state a claim as he has not alleged any activity protected under the First Amendment.

C. Motion for Preliminary Injunction

Plaintiff requests an injunction requiring two boxes of his personal property be returned to him. The Prison Litigation Reform Act places limitations on injunctive relief. Section 3626(a)(1)(A) provides in relevant part, "[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A).

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[1] The inclusion of Doe defendants under these circumstances is permissible, as Plaintiff may amend the complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure once the identity of Defendants is known through discovery or other means. Merritt v. Los Angeles, 875 F.2d 765, 768 (9th Cir. 1989); see Swartz v. Gold Dust Casino, Inc., 91 F.R.D. 543, 547 (D. Nev. 1981).

Although Plaintiff alleges that his personal property has been withheld from him, Plaintiff's complaint does not state a cognizable claim arising out of the deprivation of the property. In the absence of a viable claim based on the deprivation of his property, Plaintiff may not seek an injunction mandating the return of the property. 18 U.S.C. § 3626(a)(1)(A); Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010), *petition for cert. filed*, 79 U.S.L.W. 3007 (U.S. Jun. 22, 2010) (No. 09-1561). Accordingly, Plaintiff's claim for injunctive relief is not cognizable.

IV. Conclusion and Order

The Court finds that Plaintiff's complaint gives rise to claims for relief against Defendants C. Sizelove, J. Heinzler, and two Doe correctional officers under the Eighth Amendment. The Court will, by separate order direct Plaintiff to submit USM 285 forms. However, the Court finds that Plaintiff fails to state a cognizable claim against Defendants regarding any other conditions of Plaintiff's confinement.

Further, the Court finds that Plaintiff has not stated a cognizable claim for injunctive relief.

Accordingly, it is HEREBY ORDERED that:

1. This action shall proceed on Plaintiff's complaint filed on April 5, 2010, against Defendants C. Sizelove, J. Heinzler under the Eighth Amendment;
2. All other claims are dismissed, with prejudice, based on Plaintiff's failure to state any claims upon which relief may be granted; and
3. Plaintiff's motion for preliminary injunction, filed August 26, 2010, is DENIED.IT IS SO ORDERED.

Dated: November 19, 2010

UNITED STATES MAGISTRATE JUDGE