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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE CRAVER,
Plaintiff,
v.
J. HASTY, et al.,
Defendants.

No. 2:11-cv-1344 TLN KJN P
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for jury trial before the Honorable Troy L. Nunley on September 28, 2015. This action is proceeding to trial on plaintiff’s claim that on February 2, 2011, while housed at High Desert State Prison (“HDSP”), defendants Raynor and Hasty used excessive force in violation of the Eighth Amendment when they sprayed O.C. spray into plaintiff’s cell during a cell search.

Pending before the court is plaintiff’s May 11, 2015 motion for federal protection. (ECF No. 131.) For the following reasons, the undersigned recommends that this motion be denied.

Plaintiff’s Pending Motion

On May 11, 2015, plaintiff filed the pending motion. At that time, plaintiff was housed at California State Prison-Lancaster (“Lancaster”). In this motion, plaintiff alleged that correctional officers at Lancaster told him that he was to be transferred to Pelican Bay State Prison (“PBSP”).

1 The officers allegedly told plaintiff that the “move came from Sacramento, you pissed somebody
2 off.” Plaintiff claimed that he told the officers that he had a jury trial in Sacramento in
3 September. In response, the officers allegedly said, “There it is...watch your back Craver, they’re
4 waiting for you.”

5 On May 27, 2015, plaintiff filed a notice of change of address and status report. (ECF No.
6 133.) In this pleading, plaintiff stated that he was now housed at PBSP. Plaintiff also stated that
7 he was sent to PBSP in order to receive the E.O.P mental health level of care. Plaintiff alleged
8 that he was discharged from a PBSP crisis bed on May 18, 2015, and immediately informed
9 prison officials that his life was in danger. After his release from the crisis bed, plaintiff alleged
10 that he was reclassified to the CCCMS level of care, which allowed custody staff to place plaintiff
11 on the “A” yard, which is known as the “war zone.” Plaintiff alleged that the psychologist
12 changed his mental health status without examining him.

13 In the May 27, 2015 pleading, plaintiff goes on to state that he is in fear of an ambush.
14 Plaintiff alleges that because he is back in the general population, “they” can persuade the active
15 gangbang inmates to attack him. Plaintiff alleges that he is now under severe stress. Plaintiff
16 states that he will not let these people kill him. Plaintiff states that he will kill himself before
17 “these people” kill him. Plaintiff states that he will hang himself rather than be housed at PBSP
18 waiting to be attacked.

19 Legal Standard

20 No defendants are located at PBSP. Usually persons or entities not a party to an action are
21 not subject to orders for injunctive relief. Zenith Radio Corp. v. Hazalentine Research, Inc., 395
22 U.S. 100 (1969). However, the fact that one is not a party does not automatically preclude the
23 court from acting. The All Writs Act, 28 U.S.C. § 1651, permits the court to issue writs
24 “necessary or appropriate in aid of their jurisdiction and agreeable to the usages and principles of
25 law.” See generally S.E.C. v. G.C. George Securities, Inc., 637 F.2d 685 (9th Cir. 1981); United
26 States v. New York Telephone, 434 U.S. 159 (1977). This section does not grant the court
27 plenary power to act in any way it wishes; rather, the All Writs Act is meant to aid the court in the
28 exercise and preservation of its jurisdiction. Plum Creek Lumber Company v. Hutton, 608 F.2d

1 1283, 1289 (9th Cir. 1979.)

2 Discussion

3 On May 29, 2015, the undersigned directed the PBSP Warden to file a status report
4 addressing plaintiff's mental health classification, whether plaintiff was appropriately housed in
5 the general population and plaintiff's safety concerns. (ECF No. 134.)

6 On June 5, 2015, the Warden filed a status report. (ECF No. 136.) Attached to the status
7 report is the declaration of Dr. Limon, Senior Psychologist at PBSP. (ECF No. 136-1.) Dr.
8 Limon states, in relevant part,

9 2. I am one of seven mental health clinicians, including a
10 psychiatrist, who have been working with Inmate Craver since he
arrived at PBSP.

11 3. Inmate Craver was endorsed to PBSP as Enhanced Outpatient
12 Program (EOP) status.

13 4. When he arrived at PBSP, he was immediately sent to the
Infirmery to a Mental Health Crisis Bed (MHCB).

14 5. While at the Infirmery, Inmate Craver's mental health status was
15 reduced from EOP to Correctional Clinical Case Management
16 (CCCMS), making him eligible for classification committee review
for placement in the PBSP General Population (GP) following
release from the MHCB.

17 6. Inmate Craver's level of care was categorized as CCCMS
18 because it was determined that his mental health crisis had been
19 treated and any remaining constellation of mental health
20 signs/symptoms did not constitute a major mental illness.
Additionally, the reviewing treatment team determined that his high
level of functioning following MHCB treatment was in line with
CCCMS level of care as opposed to a higher level such as EOP.

21 7. Higher-functioning inmates who are inadvertently made EOP
22 level of care may harass, intimidate, and pressure lower-functioning
EOP inmates.

23 8. Inmate Craver was discharged to GP housing on May 18, 2015.
24 Inmate Craver made a suicidal gesture causing him to be readmitted
to the MHCB on May 20, 2015, where he remains pending further
25 evaluation.

26 9. While in a MHCB, Inmate Craver has access to twenty-four
hour nursing care, as well as therapy and counseling.

27 10. Inmate Craver has stated to staff that he is not safe in GP. This
28 information was forwarded to custodial staff for review. It is my
understanding that Inmate Craver did not provide sufficient

1 information to custodial staff to preclude him from placement in GP
2 housing.

3 11. Mental Health Staff determine the level of mental health care
4 and pass information representing a risk of safety and security to
5 the appropriate authorities. Inmate Craver's safety concerns were
6 deferred to custody for further action.

7 (Id. at 1-2.)

8 The Warden has also provided the declaration of PBSP Correctional Counselor ("CC")
9 Walch. (ECF No. 136-2.) CC Walch states, in relevant part,

10 10. Inmate Craver has stated to staff that he is not safe in GP, but
11 Inmate Craver cannot identify any specific enemies on the grounds
12 or any specific reason why he is unsafe in general population.

13 11. Given the threats Inmate Craver made against staff and other
14 inmates, it has been recommended that Inmate Craver be placed in
15 the Administrative Segregation Unit (ASU) upon his release from
16 the infirmary until a decision can be made as to permanent housing.

17 (Id. at 2.)

18 After reviewing the declarations of Dr. Limon and CC Walch, the undersigned finds that
19 injunctive relief pursuant to the All Writs Act is not warranted. Plaintiff was transferred to PBSP
20 after being classified as requiring the EOP level of care. This classification was "inadvertent," as
21 plaintiff was reclassified as requiring the CCCMS level of care shortly after his transfer to PBSP,
22 making him eligible for housing in the general population. These circumstances apparently
23 fueled plaintiff's allegations that his transfer to PBSP was retaliatory.

24 However, it is clear from CC Walch's declaration that officials at PBSP are aware of
25 plaintiff's security concerns. According to CC Walch, plaintiff's security concerns cannot be
26 substantiated because plaintiff is unable to identify any specific enemies or give specific reasons
27 why he is unsafe in the general population.

28 Because plaintiff's safety concerns cannot be substantiated, and because plaintiff is
currently housed in administrative segregation rather than the general population, plaintiff's
motion for federal protection should be denied.¹


¹ Plaintiff has previously filed motions alleging fears of attack by prison officials. On September 30, 2013, while housed at Lancaster, plaintiff filed a motion for federal protection alleging that

1 Accordingly, IT IS HEREBY ORDERED that the Clerk shall serve a copy of this order on
2 Deputy Attorney General Andrea Sloan; and

3 IT IS HEREBY RECOMMENDED that plaintiff's motion for federal protection (ECF
4 No. 131) be denied.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: June 17, 2015

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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prison officials made threatening comments to him. (ECF No. 74.) Invoking the All Writs Act,
the court ordered the Lancaster Warden to file a response to these claims. (ECF No. 76.) After
reviewing the Warden's response, on December 30, 2013, the court denied plaintiff's September
30, 2013 motion for federal protection. (ECF No. 87.)

On June 18, 2014, plaintiff filed another motion for federal protection, alleging that prison
officials at Lancaster had placed a "hit" on plaintiff. (ECF No. 108.) Invoking the All Writs Act,
the court ordered the Lancaster Warden to file a response to this motion. (ECF No. 109.) After
reviewing the Warden's response, on August 22, 2014, the court denied plaintiff's June 18, 2014
motion for federal protection. (ECF No. 119.)