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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID GASTON WILKES,
Plaintiff,
v.
RIDGEWAY,
Defendant.

Case No. [16-cv-02401-JD](#)

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 35

Plaintiff, a former detainee proceeding pro se, has sued under 42 U.S.C. § 1983 alleging that the sole defendant in this case refused to transfer plaintiff to a treatment program and as a result he suffered medical injuries. Defendant filed a motion for summary judgment, and plaintiff, while represented by counsel, filed an opposition. The motion is granted.¹

BACKGROUND

The following facts are undisputed unless otherwise noted:

Plaintiff was convicted of felony assault on August 7, 2013, in San Francisco Superior Court case number 221026. Motion for Summary Judgment (“MSJ”), Paulson Decl. Ex. C at 1. As a result he was placed on probation. *Id.* On February 16, 2016, plaintiff admitted a probation violation. *Id.* at 2; Request for Judicial Notice (“RJN”) Ex. A. As a condition of continuing on probation, plaintiff was ordered to participate in the Wistar residential treatment program. *Id.* Plaintiff was taken to a detox facility as a requirement for placement at Wistar. MSJ, Collins

¹ The Court will not consider plaintiff’s retaliation and Americans with Disabilities Act arguments, because those claims were previously dismissed.

1 Decl. Ex. A, Depo. at 36. Plaintiff left the detox facility without permission and never reported to
2 Wistar, so a bench warrant was issued. MSJ, Paulson Decl. Ex. C at 2. Plaintiff was arrested and
3 on March 24, 2016 appeared in court on the probation violation and was remanded to custody.
4 *Id.*; RJN Ex. C. On April 8, 2016, plaintiff admitted another probation violation. RJN Exs. D, E.
5 The sentence imposed by the trial court for the probation violation was a negotiated disposition
6 between plaintiff’s attorney and the district attorney’s office. RJN Ex. E. Plaintiff, as a new
7 condition of probation, was to serve eighteen months in county jail which could be served in the
8 residential treatment program at Wistar. *Id.* The trial court signed the order for plaintiff’s transfer
9 to Wistar on April 12, 2016. RJN Ex. F.

10 Defendant is a captain with the San Francisco Sheriff’s Department (“SFSD”). MSJ,
11 Paulson Decl. ¶ 1. Following a risk assessment of plaintiff by the SFSD, defendant refused to
12 transport plaintiff to Wistar. *Id.* ¶ 5. Defendant and the SFSD believed that plaintiff had a high
13 risk of absconding again and creating a community safety concern. *Id.* Defendant reached this
14 decision based on plaintiff’s ineligibility for the program due to the underlying felony conviction;
15 plaintiff’s seven probation violations; the multiple sentence modifications with five bench
16 warrants on this case alone; plaintiff ineligibility for alternative programs because of his
17 requirements to register as a sex offender; plaintiff’s statewide criminal history which was so
18 extensive that it revealed a strong amount of risk for recidivism; and plaintiff’s failure to complete
19 three previous attempts at Wistar (January 10, 2014, January 13, 2015, February 19, 2016.) *Id.*

20 On May 13, 2016, a hearing was held and the trial court agreed that the decision to refuse
21 to transport plaintiff was within the discretion of the SFSD. RJN Ex. G. Plaintiff became angry
22 and had to be removed from the courtroom. *Id.* Plaintiff’s counsel requested to withdraw, which
23 was granted by the trial court. *Id.* On May 20, 2016, plaintiff appeared with new counsel. RJN
24 Ex. H. Plaintiff appeared again on May 27, 2016, and once again had to be removed from the
25 courtroom. RJN Ex. I.

26 On June 24, 2016, the trial court determined that the sentence that had been imposed on
27 April 8, 2016 for the probation violation was not lawful and allowed plaintiff to withdraw his
28 admission to the violation. RJN Ex. J. Plaintiff entered a new probation violation admission and

1 received credit for the time served in custody and it was planned that he would be released the
2 following Monday. *Id.* Plaintiff was released on June 28, 2016, and voluntarily entered Wistar
3 that day. MSJ, Collins Decl. Ex. A, Depo. at 18.

4 **LEGAL STANDARD**

5 Summary judgment is proper where the pleadings, discovery, and affidavits show there is
6 “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
7 law.” *See* Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case.
8 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is
9 genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving
10 party. *See id.*

11 A court shall grant summary judgment “against a party who fails to make a showing
12 sufficient to establish the existence of an element essential to that party’s case, and on which that
13 party will bear the burden of proof at trial[,] . . . since a complete failure of proof concerning an
14 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”
15 *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party bears the initial
16 burden of identifying those portions of the record that demonstrate the absence of a genuine issue
17 of material fact. *Id.* The burden then shifts to the nonmoving party to “go beyond the pleadings
18 and by [his] own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
19 file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *See id.* at 324
20 (citing Fed. R. Civ. P. 56(e) (amended 2010)).

21 For purposes of summary judgment, the Court must view the evidence in the light most
22 favorable to the nonmoving party; if the evidence produced by the moving party conflicts with
23 evidence produced by the nonmoving party, the court must assume the truth of the evidence
24 submitted by the nonmoving party. *See Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).
25 The Court’s function on a summary judgment motion is not to make credibility determinations or
26 weigh conflicting evidence with respect to a disputed material fact. *See T.W. Elec. Serv., Inc. v.*
27 *Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).
28

1 Deliberate indifference to serious medical needs violates the Eighth Amendment’s
2 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);
3 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*
4 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of
5 “deliberate indifference” involves an examination of two elements: the seriousness of the
6 prisoner’s medical need and the nature of the defendant’s response to that need. *Id.* at 1059.

7 A “serious” medical need exists if the failure to treat a prisoner’s condition could result in
8 further significant injury or the “unnecessary and wanton infliction of pain.” *Id.* The existence of
9 an injury that a reasonable doctor or patient would find important and worthy of comment or
10 treatment; the presence of a medical condition that significantly affects an individual’s daily
11 activities; or the existence of chronic and substantial pain are examples of indications that a
12 prisoner has a “serious” need for medical treatment. *Id.* at 1059-60.

13 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
14 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate
15 it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only “be aware of
16 facts from which the inference could be drawn that a substantial risk of serious harm exists,” but
17 he “must also draw the inference.” *Id.* If a prison official should have been aware of the risk, but
18 was not, then the official has not violated the Eighth Amendment, no matter how severe the risk.
19 *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002). “A difference of opinion
20 between a prisoner-patient and prison medical authorities regarding treatment does not give rise to
21 a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

22 **DISCUSSION**

23 This action continues solely on the claim that defendant was deliberately indifferent to
24 plaintiff’s serious medical needs by refusing to transfer him to the Wistar program. It is
25 undisputed that approximately two months after defendant refused to transfer plaintiff to the
26 program, plaintiff was released from custody and entered the program. In the motion for summary
27 judgment defendant noted that plaintiff has not presented any evidence that there was an Eighth
28 Amendment violation or that he was denied any pertinent medical treatment. In the attorney

1 prepared opposition, plaintiff failed to present any evidence to support an Eighth Amendment
2 violation. Even if plaintiff’s attorney had presented medical evidence, mere delay in providing
3 care without more is insufficient to constitute deliberate indifference. *See Estelle*, 429 U.S. at
4 105-07. Summary judgment is granted to defendant.

5 Defendant is also entitled to qualified immunity. The defense of qualified immunity
6 protects “government officials . . . from liability for civil damages insofar as their conduct does
7 not violate clearly established statutory or constitutional rights of which a reasonable person
8 would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The rule of “qualified
9 immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’”
10 *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).
11 Defendants can have a reasonable, but mistaken, belief about the facts or about what the law
12 requires in any given situation. *Id.* at 205. A court considering a claim of qualified immunity
13 must determine whether the plaintiff has alleged the deprivation of an actual constitutional right
14 and whether such right was clearly established such that it would be clear to a reasonable officer
15 that his conduct was unlawful in the situation he confronted. *See Pearson v. Callahan*, 555 U.S.
16 223, 236 (2009) (overruling the sequence of the two-part test that required determining a
17 deprivation first and then deciding whether such right was clearly established, as required by
18 *Saucier*). The Court may exercise its discretion in deciding which prong to address first, in light
19 of the particular circumstances of each case. *Pearson*, 555 U.S. at 236.

20 It would not be clear to a reasonable official that it would be unlawful to deny plaintiff’s
21 transfer to the residential treatment program due to plaintiff’s underlying felony conviction, seven
22 probation violations and modifications with five bench warrants, and his three previous failures to
23 complete the same program in the preceding two years. Moreover, plaintiff presents no specific
24 arguments as to how defendant was deliberately indifferent to his serious medical needs.

25 **CONCLUSION**

26 1. Defendant’s motion for summary judgment (Docket No. 35) is **GRANTED**.²
27

28 ² To the extent plaintiff seeks to proceed with any state law claims, the Court declines to exercise

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2. The Clerk shall terminate all pending motions, enter judgment, and close the file.

IT IS SO ORDERED.

Dated: August 8, 2018



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 DAVID GASTON WILKES,
4 Plaintiff,
5
6 v.
7 RIDGEWAY, et al.,
8 Defendants.

Case No. [16-cv-02401-JD](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on August 8, 2018, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 David Gaston Wilkes
18 1415 Harrison St., #515
Oakland, CA 94612

19
20 Dated: August 8, 2018

21
22 Susan Y. Soong
23 Clerk, United States District Court

24
25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28