

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONAH G. GARNIER,)	No. C 08-2881 CW (PR)
)	
Plaintiff,)	ORDER OF SERVICE
)	
v.)	
)	
DONALD FISHER, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Jonah G. Garnier, a state prisoner currently incarcerated at Avenal State Prison, has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging a violation of his constitutional rights while he was incarcerated at Marin County Jail. His motion for leave to proceed in forma pauperis has been granted.

Venue is proper in this district because the acts complained of occurred while Plaintiff was confined in the Marin County Jail. 28 U.S.C. §§ 84(a), 1391(b).

BACKGROUND

According to the allegations in the complaint, on October 18, 2007, Plaintiff was placed on suicide watch and put into a "safety garment." (Compl. at 3.) Defendants Deputies Henry McKenzie and Donald Fisher then transported Plaintiff to the Marin General Hospital Emergency Room. (Id.) Plaintiff claims that "throughout the whole duration, from leaving [his] cell to being escorted by two deputies through the public parking lot and crowded public emergency room, as well as during the admittance interviews and

1 examinations, [he] was wearing only a one piece 'Ferrgeson' safety
2 garment." (Id.) Plaintiff alleges that he was not provided with
3 any clothing, and the safety garment he was wearing "partially
4 exposed [his] genitals when sitting, and only covered one third of
5 [his] body when standing." (Id.) He alleges that being in public
6 in this partially clothed state caused him "mental/psychological
7 anguish." (Id.)

8 Plaintiff alleges that the failure to provide him with
9 sufficient clothing in a public place over a number of hours
10 amounted to a "clear violation of [his] Eighth Amendment
11 constitutional rights." (Id., Inmate Grievance Form at 1.) In
12 addition to Defendants McKenzie and Fisher, he names the following
13 Defendants: the Marin County Jail and the Marin County Sheriff's
14 Department. He seeks injunctive relief and monetary damages.

15 DISCUSSION

16 I. Standard of Review

17 A federal court must conduct a preliminary screening in any
18 case in which a prisoner seeks redress from a governmental entity
19 or officer or employee of a governmental entity. See 28 U.S.C.
20 § 1915A(a). In its review, the court must identify cognizable
21 claims and dismiss any claims that are frivolous, malicious, fail
22 to state a claim upon which relief may be granted or seek monetary
23 relief from a defendant who is immune from such relief. See id.
24 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
25 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
26 699 (9th Cir. 1988).

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must
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1 allege two essential elements: (1) that a right secured by the
2 Constitution or laws of the United States was violated, and
3 (2) that the alleged violation was committed by a person acting
4 under the color of state law. See West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 II. Legal Claims

7 A. Injunctive Relief Claims

8 Plaintiff seeks both injunctive relief and monetary damages.
9 However, he is no longer incarcerated at Marin County Jail, where
10 the alleged violations took place. The jurisdiction of the federal
11 courts depends on the existence of a "case or controversy" under
12 Article III of the Constitution. Pub. Utils. Comm'n of State of
13 Cal. v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996). A claim is
14 considered moot if it has lost its character as a present, live
15 controversy, and if no effective relief can be granted: "Where the
16 question sought to be adjudicated has been mooted by developments
17 subsequent to filing of the complaint, no justiciable controversy
18 is presented." Flast v. Cohen, 392 U.S. 83, 95 (1968). Where
19 injunctive relief is involved, questions of mootness are determined
20 in light of the present circumstances. See Mitchell v. Dupnik, 75
21 F.3d 517, 528 (9th Cir. 1996).

22 When an inmate has been transferred to another prison and
23 there is no reasonable expectation nor demonstrated probability
24 that he will again be subjected to the prison conditions from which
25 he seeks injunctive relief, the claim for injunctive relief should
26 be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69
27 (9th Cir. 1995). A claim that the inmate might be re-transferred
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1 to the prison where the injury occurred is too speculative to
2 overcome mootness. Id.

3 Plaintiff's complaint alleges unconstitutional conditions of
4 confinement during the period of his confinement at Marin County
5 Jail. He sought injunctive relief to remedy these alleged
6 injuries. On June 2, 2008, the date he filed his complaint,
7 Plaintiff informed the Court he had been transferred to Napa State
8 Hospital. He has since been transferred to San Quentin State
9 Prison and then to Avenal State Prison. Because Plaintiff has not
10 been incarcerated at Marin County Jail since at least June, 2008,
11 his claims for injunctive relief from the conditions of his
12 confinement there are DISMISSED as moot. The Court reviews
13 Plaintiff's remaining claims for damages.

14 B. Eighth Amendment Claim

15 The treatment a prisoner receives in prison and the conditions
16 under which he is confined are subject to scrutiny under the Eighth
17 Amendment. See Helling v. McKinney, 509 U.S. 25, 31 (1993).¹ The
18 Eighth Amendment imposes duties on prison officials, who must
19 provide all prisoners with the basic necessities of life such as
20 food, clothing, shelter, sanitation, medical care and personal
21 safety. See Farmer v. Brennan, 511 U.S. 825, 832 (1970); DeShaney
22 v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 199-200
23 (1989); Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982).

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26 ¹ If Plaintiff was initially confined at the Marin County Jail
27 and is now in prison, he may have been a pretrial detainee at the
28 time of the alleged constitutional violations. When a pretrial
detainee challenges conditions of his confinement, the proper
inquiry is whether the conditions amount to punishment in violation
of the Due Process Clause of the Fourteenth Amendment. See Bell v.
Wolfish, 441 U.S. 520, 535 n.16 (1979).

1 A prison official violates the Eighth Amendment when two
2 requirements are met: (1) the deprivation alleged must be,
3 objectively, sufficiently serious, see Farmer, 511 U.S. at 834
4 (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)), and (2) the
5 prison official must possess a sufficiently culpable state of mind,
6 see id. (citing Wilson, 501 U.S. at 297).

7 In determining whether a deprivation of a basic necessity is
8 sufficiently serious to satisfy the objective component of an
9 Eighth Amendment claim, a court must consider the circumstances,
10 nature, and duration of the deprivation. The more basic the need,
11 the shorter the time it can be withheld. See Johnson v. Lewis, 217
12 F.3d 726, 731 (9th Cir. 2000).

13 In prison-conditions cases, the necessary state of mind is one
14 of "deliberate indifference." See, e.g., Farmer, 511 U.S. at 834.
15 A prison employee is deliberately indifferent if he knows that a
16 prisoner faces a substantial risk of serious harm and disregards
17 that risk by failing to take reasonable steps to abate it. Id. at
18 837.

19 Liberally construed, Plaintiff's allegations present a
20 cognizable Eighth Amendment claim for deliberate indifference to
21 his basic life necessities against Defendants Fisher and McKenzie.²

22 C. Municipal Liability Claim

23 Plaintiff contends that Defendant Fisher informed him that the
24 use of the "safety garment" was "per our policy." (Compl. at 2.)
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26
27 ² Even if Plaintiff was a pretrial detainee at the time of the
28 alleged violations, the Court would have also found that his
allegations against Defendants Fisher and McKenzie present a
cognizable claim for deliberate indifference in violation of the
Due Process Clause of the Fourteenth Amendment.

1 Plaintiff also alleges that the second level review of his inmate
2 grievance stated, "All Marin County Jail policies were followed."
3 (Id.) Therefore, Plaintiff claims that the use of the "safety
4 garment" and the failure to provide him with sufficient clothing in
5 a public place over a number of hours was sanctioned by the
6 policies and practices of the Marin County Sheriff's Department or
7 the Marin County Jail. Local governments are "persons" subject to
8 liability under 42 U.S.C. § 1983 where official policy or custom
9 causes a constitutional tort, see Monell v. Dep't of Social Servs.,
10 436 U.S. 658, 690 (1978); however, a city or county may not be held
11 vicariously liable for the unconstitutional acts of its employees
12 under the theory of respondeat superior, see Board of County
13 Comm'rs v. Brown, 520 U.S. 397, 403 (1997); Monell, 436 U.S. at
14 691; Fuller v. City of Oakland, 47 F.3d 1522, 1534 (9th Cir. 1995).
15 To impose municipal liability under § 1983 for a violation of
16 constitutional rights, a plaintiff must show: (1) that the
17 plaintiff possessed a constitutional right of which he or she was
18 deprived; (2) that the municipality had a policy; (3) that this
19 policy amounts to deliberate indifference to the plaintiff's
20 constitutional rights; and (4) that the policy is the moving force
21 behind the constitutional violation. See Plumeau v. School Dist.
22 No. 40 County of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997).

23 Liberally construed, Plaintiff's allegations are sufficient to
24 state a cognizable municipal liability claim against the Marin
25 County Sheriff's Department or the Marin County Jail. See
26 Galbraith v. County of Santa Clara, 307 F.3d 1119, 1127 (9th Cir.
27 2002) (holding that it is improper to dismiss on the pleadings
28 alone a § 1983 complaint alleging municipal liability even if claim

1 is based on nothing more than bare allegation that individual
2 employee's conduct conformed to official policy, conduct or
3 practice); accord Leatherman v. Tarrant County Narcotics
4 Intelligence & Coordination Unit, 507 U.S. 163, 168-69 (1993)
5 (allegations of municipal liability do not require heightened
6 pleading standard).

7 CONCLUSION

8 For the foregoing reasons, the Court orders as follows:

- 9 1. Plaintiff's claims for injunctive relief are DISMISSED as
10 moot.
- 11 2. Plaintiff has stated a cognizable Eighth Amendment claim
12 against Defendants Fisher and McKenzie for deliberate indifference
13 to his basic life necessities.
- 14 3. Plaintiff has stated a cognizable municipal liability
15 claim against the Marin County Sheriff's Department and the Marin
16 County Jail.
- 17 4. The Clerk of the Court shall mail a Notice of Lawsuit and
18 Request for Waiver of Service of Summons, two copies of the Waiver
19 of Service of Summons, a copy of the complaint and all attachments
20 thereto (docket no. 1) and a copy of this Order to: the Marin
21 County Sheriff's Department and the Marin County Jail as well as
22 Deputies Donald Fisher and Henry McKenzie of the Marin County
23 Sheriff's Department. The Clerk of the Court shall also mail a
24 copy of the complaint and a copy of this Order to the Marin County
25 Counsel's Office. Additionally, the Clerk shall mail a copy of
26 this Order to Plaintiff.
- 27 5. Defendants are cautioned that Rule 4 of the Federal Rules
28 of Civil Procedure requires them to cooperate in saving unnecessary

1 costs of service of the summons and complaint. Pursuant to Rule 4,
2 if Defendants, after being notified of this action and asked by the
3 Court, on behalf of Plaintiff, to waive service of the summons,
4 fail to do so, they will be required to bear the cost of such
5 service unless good cause be shown for their failure to sign and
6 return the waiver form. If service is waived, this action will
7 proceed as if Defendants had been served on the date that the
8 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
9 Defendants will not be required to serve and file an answer before
10 sixty (60) days from the date on which the request for waiver was
11 sent. (This allows a longer time to respond than would be required
12 if formal service of summons is necessary.) Defendants are asked
13 to read the statement set forth at the foot of the waiver form that
14 more completely describes the duties of the parties with regard to
15 waiver of service of the summons. If service is waived after the
16 date provided in the Notice but before Defendants have been
17 personally served, the Answer shall be due sixty (60) days from the
18 date on which the request for waiver was sent or twenty (20) days
19 from the date the waiver form is filed, whichever is later.

20 6. Defendants shall answer the complaint in accordance with
21 the Federal Rules of Civil Procedure. The following briefing
22 schedule shall govern dispositive motions in this action:

23 a. No later than ninety (90) days from the date their
24 answer is due, Defendants shall file a motion for summary judgment
25 or other dispositive motion. The motion shall be supported by
26 adequate factual documentation and shall conform in all respects to
27 Federal Rule of Civil Procedure 56. If Defendants are of the
28 opinion that this case cannot be resolved by summary judgment, they

1 shall so inform the Court prior to the date the summary judgment
2 motion is due. All papers filed with the Court shall be promptly
3 served on Plaintiff.

4 b. Plaintiff's opposition to the dispositive motion
5 shall be filed with the Court and served on Defendants no later
6 than sixty (60) days after the date on which Defendants' motion is
7 filed. The Ninth Circuit has held that the following notice should
8 be given to pro se plaintiffs facing a summary judgment motion:

9 The defendants have made a motion for summary
10 judgment by which they seek to have your case dismissed.
11 A motion for summary judgment under Rule 56 of the
12 Federal Rules of Civil Procedure will, if granted, end
13 your case.

14 Rule 56 tells you what you must do in order to
15 oppose a motion for summary judgment. Generally, summary
16 judgment must be granted when there is no genuine issue
17 of material fact -- that is, if there is no real dispute
18 about any fact that would affect the result of your case,
19 the party who asked for summary judgment is entitled to
20 judgment as a matter of law, which will end your case.
21 When a party you are suing makes a motion for summary
22 judgment that is properly supported by declarations (or
23 other sworn testimony), you cannot simply rely on what
24 your complaint says. Instead, you must set out specific
25 facts in declarations, depositions, answers to
26 interrogatories, or authenticated documents, as provided
27 in Rule 56(e), that contradict the facts shown in the
28 defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If
you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against
you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

24 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
25 banc).

26 Plaintiff is advised to read Rule 56 of the Federal Rules of
27 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
28 (party opposing summary judgment must come forward with evidence

1 showing triable issues of material fact on every essential element
2 of his claim). Plaintiff is cautioned that because he bears the
3 burden of proving his allegations in this case, he must be prepared
4 to produce evidence in support of those allegations when he files
5 his opposition to Defendants' dispositive motion. Such evidence
6 may include sworn declarations from himself and other witnesses to
7 the incident, and copies of documents authenticated by sworn
8 declaration. Plaintiff will not be able to avoid summary judgment
9 simply by repeating the allegations of his complaint.

10 c. If Defendants wish to file a reply brief, they shall
11 do so no later than thirty (30) days after the date Plaintiff's
12 opposition is filed.

13 d. The motion shall be deemed submitted as of the date
14 the reply brief is due. No hearing will be held on the motion
15 unless the Court so orders at a later date.

16 7. Discovery may be taken in this action in accordance with
17 the Federal Rules of Civil Procedure. Leave of the Court pursuant
18 to Rule 30(a)(2) is hereby granted to Defendants to depose
19 Plaintiff and any other necessary witnesses confined in prison.

20 8. All communications by Plaintiff with the Court must be
21 served on Defendants, or Defendants' counsel once counsel has been
22 designated, by mailing a true copy of the document to Defendants or
23 Defendants' counsel.

24 9. It is Plaintiff's responsibility to prosecute this case.
25 Plaintiff must keep the Court informed of any change of address and
26 must comply with the Court's orders in a timely fashion.

27 10. Extensions of time are not favored, though reasonable
28 extensions will be granted. Any motion for an extension of time

1 must be filed no later than fifteen (15) days prior to the deadline
2 sought to be extended.

3 IT IS SO ORDERED.

4 DATED: 7/7/09



CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 JONAH GABRIEL GARNIER,

5 Plaintiff,

6 v.

7 DONALD FISHER et al,

8 Defendant.
_____ /

Case Number: CV08-02881 CW

CERTIFICATE OF SERVICE

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

11 That on July 7, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Jonah Gabriel Garnier G 29257
16 Avenal State Prison
17 P.O. Box 9
18 Avenal, CA 93204

19 Dated: July 7, 2009

Richard W. Wiekling, Clerk
By: Sheilah Cahill, Deputy Clerk

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For the Northern District of California