

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

THEODORE D. JONES,

No. C 08-04172 CW (PR)

Plaintiff,

ORDER OF SERVICE

v.

SAN FRANCISCO COUNTY SHERIFF
MICHAEL HENNESSEY, et al.,

Defendants.

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants used excessive force against him and were deliberately indifferent to his serious medical needs.

Plaintiff's motion for leave to proceed in forma pauperis has been granted. He has since paid the full filing fee.

Venue is proper because the events giving rise to the claim are alleged to have occurred at the San Francisco County Jail (SFCJ), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: SFCJ Sheriff Michael Hennessey; SFCJ Sergeants McCollough (#1390) and Threats (#707); and SFCJ Deputies Laval (#1559) and Shima¹ (#1566). Plaintiff seeks monetary damages.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any

¹ Plaintiff spelled Defendant Shima¹ura's name as "Shamura" in his complaint. Clerk's staff has confirmed that the correct spelling is "Shima¹ura."

1 case in which a prisoner seeks redress from a governmental entity
2 or officer or employee of a governmental entity. 28 U.S.C.
3 § 1915A(a). In its review, the court must identify any cognizable
4 claims and dismiss any claims that are frivolous, malicious, fail
5 to state a claim upon which relief may be granted or seek monetary
6 relief from a defendant who is immune from such relief. Id.
7 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
8 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
9 1988).

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must
11 allege two essential elements: (1) that a right secured by the
12 Constitution or laws of the United States was violated, and
13 (2) that the alleged violation was committed by a person acting
14 under the color of state law. West v. Atkins, 487 U.S. 42, 48
15 (1988).

16 II. Legal Claims

17 A. Excessive Force

18 A prisoner has the right to be free from cruel and unusual
19 punishment, including physical abuse by guards. Whenever prison
20 officials stand accused of using excessive physical force in
21 violation of the Eighth Amendment, the core judicial inquiry is
22 whether force was applied in a good-faith effort to maintain or
23 restore discipline, or maliciously and sadistically to cause harm.
24 Hudson v. McMillian, 503 U.S. 1, 6 (1992) (citing Whitley v.
25 Albers, 475 U.S. 312, 317 (1986)).

26 Plaintiff alleges that on March 11, 2008, he was subjected to
27 excessive force by Defendant Laval. Specifically, Defendant Laval
28 took Plaintiff to an "isolated area" and "became enraged striking,

1 punching, kicking [Plaintiff], and poking his finger in
2 [Plaintiff's] eye sockets." (Compl. at 3.) Plaintiff claims that
3 he was handcuffed during the "violent beating." (Compl., Attach.
4 at 1.) He alleges that he sustained injuries as a result of this
5 incident.

6 Plaintiff alleges Defendants McCollough, Threats and Shimauro
7 are liable for failing to intervene and for "covering up assault
8 inflicted by Deputy Laval." (Id.)

9 Liberally construed, Plaintiff's complaint states a cognizable
10 Eighth Amendment claim against Defendants Laval, McCollough,
11 Threats and Shimauro.

12 B. Deliberate Indifference Claim

13 Plaintiff's allegations also state a claim for deliberate
14 indifference to his serious medical needs.

15 Deliberate indifference to serious medical needs violates the
16 Eighth Amendment's proscription against cruel and unusual
17 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
18 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
19 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
20 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771
21 (9th Cir. 1986). A determination of "deliberate indifference"
22 involves an examination of two elements: the seriousness of the
23 prisoner's medical need and the nature of the defendant's response
24 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical
25 need exists if the failure to treat a prisoner's condition could
26 result in further significant injury or the "unnecessary and wanton
27 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at
28 104). A prison official is deliberately indifferent if he or she

1 knows that a prisoner faces a substantial risk of serious harm and
2 disregards that risk by failing to take reasonable steps to abate
3 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

4 Plaintiff states that he suffered from "significant injuries
5 to [his] shoulder, knee and hip." (Compl., Attach at 1.).
6 Defendants refused to provide Plaintiff with medical treatment for
7 his injuries.

8 Plaintiff has adequately pled cognizable claims against
9 Defendants Laval, McCollough, Threats and Shimauro for the use of
10 excessive force and deliberate indifference to his medical needs.

11 C. Supervisory Liability

12 In addition to naming Defendants Laval, McCollough, Threats
13 and Shimauro, Plaintiff also names Defendant Hennessey on the basis
14 of supervisory liability.

15 A supervisor may be liable under § 1983 upon a showing of
16 (1) personal involvement in the constitutional deprivation or (2) a
17 sufficient causal connection between the supervisor's wrongful
18 conduct and the constitutional violation. Redman v. County of San
19 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation
20 omitted). Here, Plaintiff has alleged neither.

21 Accordingly, Plaintiff's supervisory liability claim against
22 Defendant Hennessey is DISMISSED with leave to amend. Plaintiff
23 may file an amendment to the complaint alleging supervisory
24 liability under the standards explained above.

25 CONCLUSION

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

27 1. Plaintiff states a cognizable Eighth Amendment claim for
28 the use of excessive force and for deliberate indifference to

1 serious medical needs against Defendants Laval, McCollough, Threats
2 and Shimaura.

3 2. Plaintiff's supervisory liability claim against Defendant
4 Hennessey is DISMISSED WITH LEAVE TO AMEND as indicated above.

5 3. Within thirty (30) days of the date of this Order
6 Plaintiff may file an amended supervisory liability claim against
7 Defendant Hennessey as set forth above in Section II(C) of this
8 Order. (Plaintiff shall resubmit only that claim and not the
9 entire complaint.) The failure to do so will result in the
10 dismissal without prejudice of the supervisory liability claim
11 against Defendant Hennessey.

12 4. The Clerk of the Court shall mail a Notice of Lawsuit and
13 Request for Waiver of Service of Summons, two copies of the Waiver
14 of Service of Summons, a copy of the complaint and all attachments
15 thereto (docket no. 1) and a copy of this Order to SFCJ Sergeant
16 McCollough (#1390) and Threats (#707) as well as SFCJ Deputies
17 Laval (#1559) and Shimaura (#1566). The Clerk of the Court shall
18 also mail a courtesy copy of the complaint and a copy of this Order
19 to the San Francisco County Counsel's Office. Additionally, the
20 Clerk shall mail a copy of this Order to Plaintiff.

21 5. Defendants are cautioned that Rule 4 of the Federal Rules
22 of Civil Procedure requires them to cooperate in saving unnecessary
23 costs of service of the summons and complaint. Pursuant to Rule 4,
24 if Defendants, after being notified of this action and asked by the
25 Court, on behalf of Plaintiff, to waive service of the summons,
26 fail to do so, they will be required to bear the cost of such
27 service unless good cause be shown for their failure to sign and
28 return the waiver form. If service is waived, this action will

1 proceed as if Defendants had been served on the date that the
2 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
3 Defendants will not be required to serve and file an answer before
4 sixty (60) days from the date on which the request for waiver was
5 sent. (This allows a longer time to respond than would be required
6 if formal service of summons is necessary.) Defendants are asked
7 to read the statement set forth at the foot of the waiver form that
8 more completely describes the duties of the parties with regard to
9 waiver of service of the summons. If service is waived after the
10 date provided in the Notice but before Defendants have been
11 personally served, the Answer shall be due sixty (60) days from the
12 date on which the request for waiver was sent or twenty (20) days
13 from the date the waiver form is filed, whichever is later.

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

17 a. No later than ninety (90) days from the date their
18 answer is due, Defendants shall file a motion for summary judgment
19 or other dispositive motion. The motion shall be supported by
20 adequate factual documentation and shall conform in all respects to
21 Federal Rule of Civil Procedure 56. If Defendants are of the
22 opinion that this case cannot be resolved by summary judgment, they
23 shall so inform the Court prior to the date the summary judgment
24 motion is due. All papers filed with the Court shall be promptly
25 served on Plaintiff.

26 b. Plaintiff's opposition to the dispositive motion
27 shall be filed with the Court and served on Defendants no later
28 than sixty (60) days after the date on which Defendants' motion is

1 filed. The Ninth Circuit has held that the following notice should
2 be given to pro se plaintiffs facing a summary judgment motion:

3 The defendant has made a motion for summary
4 judgment by which they seek to have your case dismissed.
5 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

6 Rule 56 tells you what you must do in order to
7 oppose a motion for summary judgment. Generally, summary
8 judgment must be granted when there is no genuine issue
9 of material fact -- that is, if there is no real dispute
10 about any fact that would affect the result of your case,
11 the party who asked for summary judgment is entitled to
12 judgment as a matter of law, which will end your case.
13 When a party you are suing makes a motion for summary
14 judgment that is properly supported by declarations (or
15 other sworn testimony), you cannot simply rely on what
16 your complaint says. Instead, you must set out specific
facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided
in Rule 56(e), that contradict the facts shown in the
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.

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

19 Plaintiff is advised to read Rule 56 of the Federal Rules of
20 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
21 (party opposing summary judgment must come forward with evidence
22 showing triable issues of material fact on every essential element
23 of his claim). Plaintiff is cautioned that because he bears the
24 burden of proving his allegations in this case, he must be prepared
25 to produce evidence in support of those allegations when he files
26 his opposition to Defendants' dispositive motion. Such evidence
27 may include sworn declarations from himself and other witnesses to
28 the incident, and copies of documents authenticated by sworn

1 declaration. Plaintiff will not be able to avoid summary judgment
2 simply by repeating the allegations of his complaint.

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

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

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

13 8. All communications by Plaintiff with the Court must be
14 served on Defendants, or Defendants' counsel once counsel has been
15 designated, by mailing a true copy of the document to Defendants or
16 Defendants' counsel.

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

20 10. Extensions of time are not favored, though reasonable
21 extensions will be granted. Any motion for an extension of time
22 must be filed no later than fifteen (15) days prior to the deadline
23 sought to be extended.

24 IT IS SO ORDERED.

25 DATED: 5/7/10



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

THEODORE D. JONES,
Plaintiff,

Case Number: CV08-04172 CW

CERTIFICATE OF SERVICE

v.

SF SHERIFF'S DEPT. et al,
Defendant.

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

That on May 7, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Theodore Dwayne Jones G18819
San Quentin State Prison
San Quentin, CA 94964

Dated: May 7, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk