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E-FILED - 9/29/08

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

LEO S. ARCHER, a.k.a. Ricky Thomas,

Plaintiff,

vs.

NAPA STATE HOSPITAL, et al.,

Defendants.

No. C 07-0329 RMW (PR)

ORDER OF PARTIAL
DISMISSAL AND
TRANSFER; DENYING
MOTIONS FOR
PRELIMINARY INJUNCTION

(Docket Nos. 18 & 23)

Plaintiff filed the instant pro se civil rights complaint pursuant to 42 U.S.C. § 1983. He was granted leave to amend, and on January 10, 2008, he filed an amended complaint against officials at three institutions where he was formerly housed: Napa State Hospital (“NSH”), Corcoran State Prison (“Corcoran”) and Solano County Jail.¹ After reviewing the complaint pursuant to 28 U.S.C. § 1915A, the court will DISMISS the claims against the NSH defendants for failure to state a cognizable claim for relief. As the only remaining claims relate to events that allegedly took place at Corcoran and the Solano County Jail, within the venue of the Eastern District of California, and are against defendants located there, the case will be TRANSFERRED to the Eastern District

¹On April 11, 2008, Plaintiff notified the court that he has been released from custody and is living in Oregon.

1 pursuant to 28 U.S.C. § 1406(a). The court will also DENY plaintiff's motions for
2 preliminary injunction.

3 **DISCUSSION**

4 A. Standard of Review

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

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

16 B. Plaintiff's Claims

17 1. Transfer

18 Plaintiff claims that officials at NSH violated his right to due process by
19 transferring him from NSH to Corcoran. A non-consensual transfer from one institution to
20 another, even to a considerably less favorable institution, does not violate the Due Process
21 or Equal Protection clauses, see Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983);
22 Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985); see also Coakley v. Murphy, 884
23 F.2d 1218, 1221 (9th Cir. 1989) (transfer from work release center back to prison does
24 not implicate due process nor equal protection rights), and no due process protections
25 such as notice or a hearing need be afforded before a prisoner is transferred, see
26 Montanye v. Haymes, 427 U.S. 236, 242 (1976).

27 The transfer alleged by plaintiff also did not violate a state created liberty interest
28 protected by due process. In order to determine whether the transfer implicated a

1 protected liberty interest, the questions are (1) whether the statutes narrowly restrict the
2 power of prison officials to deny inmates a transfer, and (2) whether the deprivation
3 suffered due to denial of a transfer request is one of "real substance." See Sandin v.
4 Conner, 515 U.S. 472, 477-87 (1995). In California, there are no substantive limitations
5 on prison officials' discretion to grant or refuse the transfer of inmates from the state
6 mental hospital to a state prison. See Welfare & Institutions Codes § 7301. A provision
7 that merely provides procedural requirements, even if mandatory, cannot provide the
8 basis for a constitutionally protected liberty interest. See Smith v. Noonan, 992 F.2d 987,
9 989 (9th Cir. 1993). Moreover, in order to amount to a deprivation of "real substance"
10 under Sandin, the transfer must (1) impose "atypical and significant hardship on the
11 inmate in relation to the ordinary incidents of prison life," or (2) "inevitably affect the
12 duration of [a] sentence." Sandin, 515 U.S. at 484, 487. Here, plaintiff complains simply
13 that he was transferred to Corcoran. However, the alleged conditions at Corcoran were
14 no different from the "ordinary incidents of prison life," and there is no allegation that the
15 transfer inevitably affects the duration of his sentence. As the statutory language fails to
16 meet the first prong of the Sandin test, and the alleged deprivation is not one of "real
17 substance" under the second prong of the Sandin test, no protected liberty interest
18 requiring constitutional protection is created.

19 Accordingly, plaintiff's allegations regarding his transfer from NSH to Corcoran
20 do not implicate his right to due process or other provision of federal law, and therefore
21 do not state a cognizable claim for relief under § 1983.

22 2. Medical Treatment

23 Plaintiff claims that NSH officials delayed providing him medical treatment for a
24 torn ligament in his finger for eight and a half hours. Even if true, such a delay is
25 relatively minor such that it amounts at most to negligence and does not rise to the level
26 of a violation of the Eighth Amendment. See Toguchi v. Chung, 391 F.3d 1051, 1060-61
27 (9th Cir. 2004) (medical malpractice or negligence does not constitute a violation of the
28 Eighth Amendment); see, e.g., Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998)

1 (finding no merit in claims stemming from alleged delays in administering pain
2 medication, treating broken nose and providing replacement crutch, because claims did
3 not amount to more than negligence); O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir.
4 1990) (repeatedly failing to satisfy requests for aspirins and antacids to alleviate
5 headaches, nausea and pains is not constitutional violation; isolated occurrences of
6 neglect may constitute grounds for medical malpractice but do not rise to level of
7 unnecessary and wanton infliction of pain); Anthony v. Dowdle, 853 F.2d 741, 743 (9th
8 Cir. 1988) (no more than negligence stated where prison warden and work supervisor
9 failed to provide prompt and sufficient medical care); cf. McGuckin, 974 at 1062 (delay
10 of seven months in providing medical care during which medical condition was left
11 virtually untreated and plaintiff was forced to endure "unnecessary pain" sufficient to
12 present colorable § 1983 claim). Accordingly, Plaintiff's allegations regarding the
13 medical care for his finger injury does not state a cognizable claim for relief under §
14 1983.

15 3. Injury By Other Inmate

16 Plaintiff alleges that he was "attacked" by another inmate at NSH, resulting in an
17 injury to his finger.

18 The failure of prison officials to protect inmates from attacks by other inmates
19 violates the Eighth Amendment only when two requirements are met: (1) the deprivation
20 alleged is, objectively, sufficiently serious; and (2) the prison official is, subjectively,
21 deliberately indifferent to inmate safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994).
22 "Deliberate indifference" is the same as the standard for criminal recklessness, i.e., the
23 officials know of and disregard an excessive risk to inmate health or safety. See id. at
24 837. The official must both be aware of facts from which the inference could be drawn
25 that a substantial risk of serious harm exists, and he must also draw the inference. See id.
26 An Eighth Amendment claimant need not show that a prison official acted or failed to act
27 believing that harm actually would befall an inmate; it is enough that the official acted or
28 failed to act despite his knowledge of a substantial risk of serious harm. See id. at 842.

1 Allegations in a pro se complaint sufficient to raise an inference that the named prison
2 officials acted with deliberate indifference – i.e, that they knew that plaintiff faced a
3 substantial risk of serious harm and disregarded that risk by failing to take reasonable
4 measures to abate it – states a “failure-to-protect” claim. Hearns v. Terhune, 413 F.3d
5 1036, 1041-42 (9th Cir. 2005).

6 Here, plaintiff alleges that the inmate attacked him because plaintiff did not give
7 him a cigarette, and that the inmate failed to take his medication prior to attacking him.
8 Plaintiff does not allege that any of the defendants knew or had reason to suspect that the
9 inmate would attack plaintiff, had not taken his medication, or posed a threat of harm to
10 plaintiff. See Berg, 794 F.2d at 459 (before being required to take action, prison official
11 must have more than a "mere suspicion" that an attack will occur). Nor does plaintiff
12 allege any facts from which it can reasonably be inferred that defendants had reason to
13 suspect the alleged attack. To whatever extent plaintiff believes that defendants *should*
14 *have known* of the danger, that is not sufficient to rise to a constitutional violation because
15 neither negligence nor gross negligence are sufficient to state an Eighth Amendment
16 claim under § 1983. See Farmer, 511 U.S. at 835-36 & n.4.

17 Accordingly, plaintiff’s allegations regarding the injury caused by another inmate
18 do not rise to the level of an Eighth Amendment violation and do not state a cognizable
19 claim for relief under § 1983.

20 4. Conditions of Confinement at Corcoran State Prison and Solano County Jail

21 The remainder of plaintiff’s allegations and claims concern conditions of
22 confinement and actions taken by officials at Corcoran and the Solano County Jail. Both
23 Corcoran and Solano County Jail are located in the Eastern District of California. See 28
24 U.S.C. § 84. Therefore, venue for the remaining claims properly lies in the Eastern
25 District, not in the Northern District. See 28 U.S.C. § 1391(b). Where a case is in the
26 wrong venue, the district court has the discretion either to dismiss the case or transfer it to
27 the proper federal court "in the interest of justice." See 28 U.S.C. § 1406(a). In the
28 interests of justice, this case will be transferred to the United States District Court for the

1 Eastern District of California.

2
3 C. Motions for Preliminary Injunction

4 Plaintiff filed two motions for a preliminary injunction, both of which seek orders
5 directing Solano County Jail officials to take action to alter the conditions of Plaintiff's
6 confinement there. To begin with, plaintiff has neither complied with the notice
7 requirement of Rule 65(a)(1) of the Federal Rules of Civil Procedure, nor certified the
8 reasons for his not providing such notice, as required by Rule 65(b) of the Federal Rules
9 of Civil Procedure. In an event, as plaintiff is no longer at the Solano County Jail, since
10 his release from custody on April 18, 2008, his motions for injunctions against jail
11 officials are moot. Accordingly, plaintiff's motions for preliminary injunction are
12 DENIED.

13 **CONCLUSION**

14 For the foregoing reasons, the court hereby orders as follows:

15 1. Plaintiff's claims against defendants at Napa State Hospital, for alleged
16 violations of the Eighth Amendment and due process, are DISMISSED for failure to state
17 a cognizable claim for relief.

18 2. In the interests of justice, this case is TRANSFERRED to the United States
19 District Court for the Eastern District of California, the proper venue for the remaining
20 claims. See 28 U.S.C. § 1406(a).

21 3. Plaintiff's motions for preliminary injunction (Docket Nos. 18 & 23) are
22 DENIED.

23 The Clerk shall transfer this matter forthwith. This order terminates Docket Nos.
24 18 & 23.

25 IT IS SO ORDERED.

26 DATED: 9/29/08

27 
28 RONALD M. WHYTE
United States District Judge