

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

PROPHET PAULCIN,

Plaintiff,

vs.

4:08CV418-SPM/AK

T. L. GILLIAM, et al,

Defendants .

_____ /

ORDER

This cause is before the court upon Plaintiff's filing of a civil rights complaint under 42 U.S.C. § 1983 (doc. 1), and an application for leave to proceed *in forma pauperis* (IFP). (Doc. 2). Leave to so proceed has been granted in a separate order. (Doc. 9).

From a review of the complaint, it is evident that the facts as presented fail to state a claim upon which relief can be granted. Consequently, the Clerk will mail to him another civil rights complaint that Plaintiff must complete in its entirety. He does not need to file any service copies of the complaint at this time.

Plaintiff alleges that he Defendants retaliated against him because of his mental illness by using excessive force against him and by filing bogus disciplinary reports. Specifically, he claims that Defendants Paynter and Sims sprayed him with chemical spray on his naked body and would not allow him to shower so he was badly burned. Plaintiff has stated a claim against these defendants on these facts

sufficient to serve them with a copy of his complaint. However, it is not clear that Defendants Gilliam or Barfield participated in this use of force or directed it. According to the facts in the complaint, they approached his cell and threatened him in an attempt to coerce his participation in a close management hearing. Without more, these facts do not state a claim for relief against these defendants. See Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996) (assaultive comments by prison guard not enough to implicate the Eighth Amendment); Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong); Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989) (prisoner has no constitutionally guaranteed immunity from being falsely or wrongly accused of conduct which may result in deprivation of protected liberty interest); Siglar v. Hightower, 112 F.3d 191, 193 (5 Cir. 1997) (verbal abuse not cognizable under 1983); Freeman v. Rideout, 808 F.2d 949, 951 (2d Cir. 1986) (same), *cert. denied*, 485 U.S. 982 (1988) (same).

Under the Eighth Amendment force is deemed legitimate in a prison setting as long as it is used “in a good faith effort to maintain or restore discipline [and not] maliciously and sadistically to cause harm.” Whitley v. Albers, 475 U.S. 312, 320-21 (1986), quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2nd Cir. 1973). A variety of factors are considered in determining whether the force was applied maliciously or sadistically, including the need for force, the relationship between that need and the amount of force used, the threat reasonably perceived by the prison officials applying it, and any efforts made to temper the severity of the force used. Hudson v. McMillian, 503 U.S. 1, 7-8 (1992). A de minimis use of force, as evidenced by no injury, is one of

the factors for consideration and cannot support a claim of excessive use of force. Hudson, at 7.

Thus, Plaintiff should provide more facts about Gilliam and Barfield's involvement in the incident involving chemical spray or Plaintiff should consider deleting these persons from his amended complaint.

Also, Plaintiff provides only conclusory facts about the filing of "bogus" disciplinary reports as retaliation. The reasons for the retaliation are not clear, he contends that he was filing grievances and was accused of "manipulating" the mental health system. Conclusory allegations of retaliation without "some facts" is not sufficient. See White v. Thompson, 2007 WL 2324613 (S. D. Ga. 2007). See also Farrow v. West, 320 F.3d 1235, 1248 (11th Cir. 2003) (prisoner may establish retaliation by "demonstrating that the prison official's actions were `the result of his having filed a grievance concerning the conditions of his imprisonment.>"). The allegations must be more than "general attacks" upon a defendant's motivations, Plaintiff must produce "affirmative evidence" of retaliation from which a jury could find that plaintiff had carried his burden of proving the requisite motive. Crawford-El v. Britton, 523 U.S. 574, 600, 118 S.Ct. 1584, 1598, 140 L.Ed.2d 759 (1998) (citations omitted).

Plaintiff does not provide facts that explain what was "bogus" about the DR nor does he make the connection between these defendants and their motivation to retaliate.

In amending, Plaintiff should carefully review the foregoing to determine whether he can present allegations sufficient to state a cause of action under the

relevant law. If Plaintiff is able to file an amended complaint, he must name as Defendants only those persons who are responsible for the alleged constitutional violations. Plaintiff must place their full names in the style of the case on the first page of the civil rights complaint form and in the other appropriate sections of the form. Further, Plaintiff should clearly describe how each named Defendant is involved in each alleged constitutional violation. In civil rights cases, more than conclusory and vague allegations are required to state a cause of action. See, e.g., Fullman v. Graddick, 739 F.2d 553, 556-57 (11th Cir. 1984). In presenting his claims, Plaintiff must set forth each allegation in a separately numbered paragraph, as it is essential that the facts relating to each Defendant be set out clearly and in detail.

To amend his complaint, Plaintiff must completely fill out a new civil rights complaint form, marking it "Amended Complaint." Plaintiff is advised that the amended complaint must contain all of Plaintiff's allegations and should not in any way refer to the original or amended complaints. An amended complaint completely replaces all previous complaints and all earlier complaints are disregarded. N.D. Fla. Loc. R. 15.1. Plaintiff should file the amended complaint in the Court and keep one identical copy for himself. Plaintiff need not file service copies until instructed to do so by the court.

Accordingly, it is hereby

ORDERED:

1. The clerk of court shall forward to Plaintiff another Section 1983 form.
2. Plaintiff must respond to this order by **November 10, 2008**.

3. Failure of Plaintiff to respond to this order or submit the requested information or explain his inability to do so will result in a recommendation to the District Judge that this action be dismissed.

DONE AND ORDERED this 10th day of October, 2008.

s/ A. KORNBLUM

ALLAN KORNBLUM
UNITED STATES MAGISTRATE JUDGE