IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

D'AARON WILLIAMS, # 20120811136,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16-cv-1359-JPG**
	)	
OFFICER GORDEN,	)	
JOHN DOE 1 (Sheriff/Lt.),	)	
JANE DOE 1 (Sheriff/Officer.),	)	
JOHN DOE 2 (Correctional Officer),	)	
ADAMS,	)	
JEFFERSON COUNTY, ILLINOIS,	)	
and MOUNT,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court for a merits review of Plaintiff's First Amended Complaint (Doc. 10), filed of record on April 25, 2017,[1] at the direction of the Court. On March 24, 2017, the Court dismissed Plaintiff's original Complaint (Doc. 1) pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted. He was ordered to file an amended complaint, limited to the claim in Count 2, if he wished to proceed with the action. (Doc. 9). Count 2 of the Complaint was outlined as follows:

> **Count 2:** First Amendment claim against Officer John Doe #2 and Lt. Jane Doe #1, for the mishandling and loss of Plaintiff's two outgoing legal letters.

Plaintiff's claims arose while he was a pre-trial detainee at the Jefferson County Jail. He has since been returned to the Cook County Department of Corrections, where he was confined

[1] Plaintiff's envelope was postmarked April 21, 2017, thus his submission complied with this Court's deadline under the prison mailbox rule. *See Edwards v. United States*, 266 F.3d 756, 758 (7th Cir. 2001).

at the time he filed this action.

Under § 1915A, the Court is required to screen prisoner complaints to filter out non-meritorious claims. *See* 28 U.S.C. § 1915A(a). The Court must dismiss any portion of the First Amended Complaint that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law is immune from such relief. 28 U.S.C. § 1915A(b).

The First Amended Complaint (Doc. 10)

In November 2016, Plaintiff was transferred from Cook County to the Jefferson County Jail ("the Jail"). (Doc. 10, p. 9). Plaintiff had been on regular doses of psychiatric medications for about 4 years, and he notified the Jail nurse that he needed these medications. However, he received only one of his prescriptions (veneflexin). Plaintiff informed 2 lieutenants and "every officer on the first and second shift" that he had not been given his medications. He filed a grievance as well. On November 14, 2016, Captain Mount notified Plaintiff that he would not be medicated in the Jail, but would only be medicated under the care of his "parenting facility medical department." (Doc. 10, p. 10).

Plaintiff submitted multiple additional grievances over the medication denial, to no avail. He told Mount and the John/Jane Doe Lieutenant(s) and C/O's that he intended to file a federal lawsuit if he did not get his prescribed medication. (Doc. 1, p. 10). He then took the step of writing to the "Office of Professional Review" to complain about the refusal by the Jail nurses and other officials to provide him with his prescribed psychiatric medications. That letter was lost and unaccounted for as a result of the alleged defects in the Jail's outgoing mail procedures – and that incident prompted Plaintiff to bring Count 2 of the instant action. (Doc. 10, p. 10).

Plaintiff discovered that a different outgoing personal letter was placed in another

inmate's envelope and delivered to the other inmate's relative.[2] (Doc. 10, p. 10). He claims that this occurred because of the Jail's policy that detainees are not allowed to seal their mail in an envelope, but instead must leave it open for inspection by Jail staff. Plaintiff hand-delivered his outgoing mail to the C/O in charge, and was told by Officer Gorden that she had personally logged his mail. However, when Plaintiff filed a grievance over the missing mail (which presumably included the letter to the Office of Professional Review), the response informed him that his letters were never logged, and there was no explanation of what happened to his outgoing mail. (Doc. 10, p. 11).

Plaintiff asserts that the denial of his medications subjected him to cruel and unusual punishment, in violation of his constitutional rights. (Doc. 10, pp. 10, 12). He seeks damages and injunctive relief with respect to his need to have his prescribed medications, and to stop the Jail from continuing its policy forbidding inmates from sealing their own mail. (Doc. 10, p. 13). As to the requests for injunctive relief, Plaintiff asserts that because he is still being held pending trial on a Cook County charge, he may be transferred back to the Jefferson County Jail if his case is continued. (Doc. 10, p. 11). If that were to occur, he could again be subjected to the constitutional violations complained of in this action.

Merits Review Pursuant to 28 U.S.C. § 1915A

Based on the allegations of the First Amended Complaint, the Court shall add an additional count to the *pro se* action.[3] The parties and the Court will use the designations below in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The designation of these counts does not constitute an opinion as to their merit. Any other claim

[2] The misdelivered personal letter formed the basis for the dismissed Count 1 in this action.
[3] Count 1 (for mishandling a personal letter) and Count 3 (for loss of personal property, i.e., the letters) were dismissed without prejudice in the original threshold merits review order (Doc. 9), thus they are not included here.

that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice. The counts under consideration herein are:

> **Count 2:** First Amendment claim against Officer John Doe #2 and Lt. Jane Doe #1, for the mishandling and loss of Plaintiff's two outgoing legal letters;
>
> **Count 4:** Fourteenth Amendment claim against all Defendants for deliberate indifference to serious medical/mental health needs, for refusing to provide Plaintiff with his prescription psychiatric medications.

The First Amended Complaint still fails to state a claim upon which relief may be granted for Count 2, and that count shall remain dismissed. Count 4 shall proceed for further review in this action against some Defendants.

Dismissal of Count 2 – Legal Mail/Access to Courts

Count 2 was dismissed from the action because the original Complaint did not include sufficient information to support a constitutional claim for denial of access to the courts resulting from the mishandling of Plaintiff's "legal" mail. The original pleading failed to indicate whether the 2 letters that were lost (the letter to the Office of Professional Review, and a letter to the Clerk of this Court) were truly legal mail related to pending or potential litigation, or an attempt to obtain legal representation. Further, the Court could not discern whether the loss of those letters had any detrimental effect on Plaintiff's ability to meet a court deadline or to otherwise pursue litigation. *See Alston v. DeBruyn*, 13 F.3d 1036, 1041 (7th Cir. 1994) (to maintain a claim for denial of access to the courts, inmate must be able to show some detriment to pending or contemplated litigation); *see also Lehn v. Holmes*, 364 F.3d 862, 868 (7th Cir. 2004).

The First Amended Complaint provides some additional information about one missing letter – the one addressed to the Office of Professional Review. Plaintiff indicates that he wrote to that agency to complain about his inability to obtain his prescription medications from the Defendants. The First Amended Complaint contains no allegations regarding the lost letter to

the Clerk of Court, thus the Court concludes that he has abandoned that portion of his claim in Count 2.

The loss of the letter to the Office of Professional Review does not appear to have hindered Plaintiff's efforts to bring a legal action over the Defendants' refusal to provide him with his prescription medications. Conceivably, writing to that office might have something to do with Plaintiff's efforts to exhaust his administrative remedies before filing a lawsuit – but even if it was relevant to the matter of exhaustion, the loss of that letter does not give rise to an independent constitutional claim for denial of access to the courts. *See Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996) (mishandling of inmate grievances does not give rise to a liberty interest protected by the Due Process Clause). Plaintiff's factual statement does not indicate that the letter was an attempt to seek legal representation or that it could otherwise be considered as "legal mail." Even if the letter were to be construed as a legal communication, its loss appears to be an isolated incident, and there is nothing to suggest that a Defendant deliberately or recklessly prevented the letter from being mailed. Accordingly, there is no basis for Plaintiff to maintain a claim for denial of access to the courts as a result of the loss of this letter. *See Snyder v. Nolen*, 380 F.3d 279, 291 (7th Cir. 2004); *Kincaid v. Vail*, 969 F.2d 594, 602 (7th Cir. 1992).

There is no apparent reason why Plaintiff did not include the underlying issue that was the subject of the letter – the denial of his medications – in his original Complaint filed in this action. But he has now done so in the First Amended Complaint, and that matter shall be addressed under Count 4 herein.

For the above reasons, **Count 2** as pled in the First Amended Complaint fails to state a constitutional claim upon which relief may be granted. It shall remain dismissed from the action without prejudice. Because Defendant Gorden was named only in connection with the mail

problems, Gorden shall again be dismissed from the action without prejudice.

Count 4 – Deliberate Indifference to Serious Medical/Mental Health Needs

A pre-trial detainee's claims brought pursuant to § 1983 arise under the Fourteenth Amendment and not the Eighth Amendment. *See Weiss v. Cooley*, 230 F.3d 1027, 1032 (7th Cir. 2000). However, the Seventh Circuit has "found it convenient and entirely appropriate to apply the same standard to claims arising under the Fourteenth Amendment (detainees) and Eighth Amendment (convicted prisoners) 'without differentiation.'" *Board v. Farnham*, 394 F.3d 469, 478 (7th Cir. 2005) (quoting *Henderson v. Sheahan*, 196 F.3d 839, 845 n.2 (7th Cir. 1999)). To state a claim for deliberate indifference to medical care, a detainee (or a convicted prisoner) must show that (1) he suffered from an objectively serious condition which created a substantial risk of harm, and (2) the defendants were aware of that risk and intentionally disregarded it. *Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010); *Grieveson v. Anderson*, 538 F.3d 763, 771-72, 777-79 (7th Cir. 2008); *Jackson v. Ill. Medi-Car, Inc.*, 300 F.3d 760, 764-65 (7th Cir. 2002).

"A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). The Seventh Circuit has found that "the need for a mental illness to be treated could certainly be considered a serious medical need." *Sanville v. McCaughtry*, 266 F.3d 724, 734 (7th Cir. 2001); *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983). Notably, a defendant's inadvertent error, negligence or even ordinary malpractice is insufficient to rise to the level of a constitutional violation. *See Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008).

In Plaintiff's case, while he does not elaborate on the nature of his mental health diagnoses, his condition was serious enough to require regular prescription psychiatric

medication, which he had been receiving for about 4 years. At this stage of the case, these facts sufficiently demonstrate that Plaintiff had an objectively serious medical condition, and that he faced a risk of harm if his medications were discontinued.

Turning to the subjective factor of a deliberate indifference claim, in early November 2016, Plaintiff informed a nurse, 2 John Doe Lieutenants, and multiple other officers on the first and second shifts that he needed to be given his prescription medications for his mental health conditions. (Doc. 10, p. 9). Despite these many requests, Plaintiff received only one of his medicines. Captain Mount responded to Plaintiff's grievance by telling him that he would not receive his medications at the Jail, but would be medicated only under the care of his "parenting facility medical department." (Doc. 10, p. 10). Plaintiff's communications with these individuals, at this stage of the litigation, support a deliberate indifference claim against Mount and the Unknown Defendants (John Doe #1, John Doe #2, and Jane Doe #1), for denial of Plaintiff's prescribed medications for his diagnosed mental health condition.

Plaintiff also includes Head Sheriff Adams and the municipality of "Jefferson County of Mt. Vernon, Illinois" as Defendants in the action. In order to obtain relief against a municipality, a plaintiff must allege that the constitutional deprivations were the result of an official policy, custom, or practice of the municipality. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 691 (1978); *see also Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 765 (7th Cir. 2006). Furthermore, when a plaintiff sues an individual (such as a sheriff) in his official capacity, the suit is treated as if the plaintiff has sued the municipality itself. *Pourghoraishi*, 449 F.3d at 765. Here, Mount's response to Plaintiff's grievance over the denial of medications – the statement that medications would be given only by the "parenting facility medical department" – suggests that the Jail had a policy or practice that caused Jail staff to deny Plaintiff's requests. (Doc. 10,

p. 10). Liberally construed, Plaintiff's allegations indicate a possible deliberate indifference claim based upon the conditions, policies, and customs of the Jefferson County Jail. Therefore, at this stage, the claim in **Count 4** may also proceed against the municipality of Jefferson County, and against Adams in his official capacity.

No claim is stated against Adams in his individual capacity, however. Plaintiff has included no factual allegations to suggest that Adams was personally involved in the decision to deny Plaintiff his medication. Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, "to be liable under § 1983, the individual defendant must have caused or participated in a constitutional deprivation." *Pepper v. Village of Oak Park*, 430 F.3d 805, 810 (7th Cir. 2005) (internal quotations and citations omitted). In the absence of any facts showing that Adams personally participated in any decision regarding Plaintiff's medications, any claim that Plaintiff intended to assert against Adams in his individual capacity shall be dismissed.

To summarize, the deliberate indifference claims in **Count 4** shall proceed against Mount, the Unknown Defendants (John Doe #1, John Doe #2, and Jane Doe #1), Jefferson County, and Adams (in his official capacity only). Of course, before the John/Jane Doe Defendants can be served, Plaintiff must identify these individuals by name.

Identification of Unknown Defendants

While Plaintiff may proceed with Count 4 against the Unknown Defendants – John Doe #1 (Sheriff/Lt.), Jane Doe #1 (Sheriff/Officer), and John Doe #2 (Correctional Officer) – these people must be identified with particularity before service of the First Amended Complaint can be made on them. Where a prisoner's complaint states specific allegations describing conduct of individual prison/jail staff members sufficient to raise a constitutional claim, but the names of

those defendants are not known, the prisoner should have the opportunity to engage in limited discovery to ascertain the identity of those defendants. *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 832 (7th Cir. 2009). In this case, Sheriff Adams, in his official capacity, is capable of responding to discovery aimed at identifying the Unknown (John/Jane Doe) Defendants. Guidelines for discovery will be set by the United States Magistrate Judge. Once the names of the John/Jane Doe Defendants are discovered, Plaintiff shall file a motion to substitute the newly identified defendant(s) in place of the generic designations in the case caption and throughout the First Amended Complaint.

Disposition

For the reasons discussed above, **COUNT 2** shall remain **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted. **COUNTS 1 and 3**, which were dismissed without prejudice in the order at Doc. 9, also remain dismissed without prejudice.

Defendant **GORDEN** is **DISMISSED** from this action without prejudice. All claims against Defendant **ADAMS** in his individual capacity are **DISMISSED** without prejudice.

With reference to **COUNT 4**, the Clerk of Court shall prepare for Defendants **ADAMS (in his official capacity as Sheriff), JEFFERSON COUNTY**, and **MOUNT**: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the First Amended Complaint (Doc. 10), the Memorandum and Order at Doc. 9, and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal

service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Service shall not be made on the **Unknown (John/Jane Doe) Defendants** until such time as Plaintiff has identified them by name in a properly filed motion for substitution of parties. Plaintiff is **ADVISED** that it is his responsibility to provide the Court with the names and service addresses for these individuals.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter shall be **REFERRED** to the United States Magistrate Judge for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral.*

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed *in forma pauperis* has been granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Finally, Plaintiff is **REMINDED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not

independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 25, 2017

s/J. Phil Gilbert
United States District Judge