

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KEVIN MARTIN,)
)
Plaintiff,)
)
vs.) **No. 3:16 CV 357**
)
SUPERINTENDENT, et al.,)
)
Defendants.)

OPINION AND ORDER

Kevin Martin, a pro se prisoner, filed an amended complaint alleging that correctional officers did not protect him from an attack by a fellow inmate on April 13, 2016. "A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. "In order to state a claim under § 1983 a plaintiff must allege: (1) that defendants deprived him of a federal constitutional right; and (2) that the defendants acted under color of state law." *Savory v. Lyons*, 469 F.3d 667, 670 (7th Cir. 2006).

Martin alleges that Sgt. Case-Worker Sender provided confidential information to an unknown inmate about an internal affairs investigation. He alleges that Sgt. Case-

Worker Sender knew that providing this information would cause the unknown inmate to attack Martin. When an inmate is attacked by another inmate, the Constitution is violated only if “deliberate indifference by prison officials effectively condones the attack by allowing it to happen.” *Haley v. Gross*, 86 F.3d 630, 640 (7th Cir. 1996). The defendant “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Here, Martin has stated a claim against Sgt. Case-Worker Sender because he alleges that the Sergeant knew that telling the unknown inmate that Martin was involved in an investigation about trafficking in the prison would motivate the inmate to attack Martin.

Martin is also suing Correctional Officer Angela McDonald and Sgt. D. Draper. He alleges that they too knew that he was involved in the internal affairs investigation of trafficking. However, he does not allege that either of them encouraged the attack by telling the unknown inmate about the investigation. He is suing Sgt. Fizer and Officer Jones. He alleges that he asked them and Sgt. D. Draper to be moved to a different cell before he was attacked. However, he has not plausibly alleged facts from which it can be inferred that any of these other four officers were deliberately indifferent to his risk of being attacked. “Prisons are dangerous places. Housing the most aggressive among us, they place violent people in close quarters.” *McGill v. Duckworth*, 944 F.2d 344, 345 (7th Cir. 1991), abrogated on other grounds by *Haley v. Gross*, 86 F.3d 630, 640 (7th Cir. 1996).

This is why general requests for help and expressions of fear are insufficient to alert guards to the need for action. *Klebanowski v. Sheahan*, 540 F.3d 633, 639–40 (7th Cir. 2008).

Klebanowski testified during his deposition that he told officers twice on September 8 that he was afraid for his life and he wanted to be transferred off the tier. Those statements, and the officers' knowledge of the first beating, are the only pieces of evidence in the record that can assist Klebanowski in his attempt to show that the officers were aware of any risk to him. We have previously held that statements like those made by Klebanowski are insufficient to alert officers to a specific threat. *Butera*, 285 F.3d at 606 (deeming insufficient to establish deliberate indifference statements by a prisoner that he was "having problems in the block" and "needed to be removed"). In *Butera*, we deemed the inmate's statements insufficient to give notice to the officers because they did not provide the identities of those who threatened the inmate, nor state what the threats were.

Id.

The facts of this case make clear our reason for requiring more than general allegations of fear or the need to be removed. By Klebanowski's own testimony, the officers knew only that he had been involved in an altercation with three other inmates, and that he wanted a transfer because he feared for his life. He did not tell them that he had actually been threatened with future violence, nor that the attack on September 8 was inflicted by gang members because of his non-gang status. Without these additional facts to rely on, there was nothing leading the officers to believe that Klebanowski himself was not speculating regarding the threat he faced out of fear based on the first attack he suffered. This lack of specificity falls below the required notice an officer must have for liability to attach for deliberate indifference.

Id. at 639–40 (footnote omitted). Here, Martin has not alleged that he told any of these four defendants that he had been specifically threatened. He has not alleged that he told them who would attack him. All he has alleged is that he was afraid because other inmates knew that he was talking to internal affairs. Like Klebanowski, Martin's lack of

specificity prevents him from stating a claim against these four defendants and they will be dismissed.

Finally, Martin named the Superintendent as a defendant in the caption of the complaint. However, he did not list the Superintendent as a defendant on page 2 nor make any allegations about the Superintendent in the body of the complaint. Therefore the Superintendent will also be dismissed.

For these reasons, the court:

(1) **GRANTS** Kevin Martin leave to proceed on an individual capacity claim for compensatory and punitive damages against Sgt. Case-Worker Sender for failing to protect him in violation of the Eighth Amendment by telling an unknown inmate that Martin was involved in an investigation about trafficking in the prison knowing that would motivate the inmate to attack Martin on April 13, 2016;

(2) **DISMISSES** all other claims;

(3) **DISMISSES** Correctional Officer Angela McDonald, Sgt. D. Draper, Sgt. Fizer, Officer Jones, and Superintendent;

(4) **DIRECTS** the clerk and the United States Marshals Service to issue and serve process on Sgt. Case-Worker Sender with a copy of this order and the amended complaint (DE # 9) as required by 28 U.S.C. § 1915(d); and

(5) **ORDERS**, pursuant to 42 U.S.C. § 1997e(g)(2), that Sgt. Case-Worker Sender respond, as provided for in the Federal Rules of Civil Procedure and N.D. Ind. L.R. 10-

1(b), only to the claim for which the plaintiff has been granted leave to proceed in this screening order.

SO ORDERED.

Date: September 19, 2016

s/ James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT