

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DARREN LEE POWELL,

Plaintiff,

v.

CASE NO.16-3251-SAC-DJW

JACK LAURIE, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed under 42 U.S.C. § 1983. Plaintiff alleges that he has been denied appropriate medical care for the treatment of diabetes by the staff of the Atchison County Jail ("ACJ"). He further alleges he has been retaliated against by jail staff and been denied information. Plaintiff seeks compensatory and punitive damages.

On August 11, 2017, Magistrate Judge Waxse entered a Notice and Order to Show Cause (Doc. #22) ("NOSC") ordering Plaintiff to show cause within twenty (20) days of the receipt of the order why this matter should not be dismissed for failure to state a claim. The NOSC stated that if Plaintiff failed within the time allotted to file a response, this action could be dismissed without further notice. Plaintiff has not responded to the NOSC.

The NOSC found that none of Plaintiff's claims alleging denial of adequate medical care in Counts 1, 2, 3, and 4 of his complaint state a claim because his allegations do not show the deliberate indifference necessary for an Eighth Amendment violation. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). These claims are dismissed for failure to state a claim.

Count 5 of Plaintiff's complaint was already dismissed by the Court. See Doc. #10. As for Counts 6 and 7 of the complaint, the NOSC further found that Plaintiff's allegations of denial of information do not make out a violation of the Constitution or federal law and that his claim of retaliation fails because he does not allege a sufficiently adverse responsive action. See *Reed v. Heimgartner*, 579 F. App'x 624, 626-27 (10th Cir. 2014); *Eaton v. Meneley*, 379 F.3d 949, 955 (10th Cir. 2004). These claims are dismissed for failure to state a claim.

IT IS THEREFORE ORDERED that this action is dismissed for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that Defendants' Motion for Extension of Time to File Answer (Doc. #21) is denied as moot.

IT IS SO ORDERED.

DATED: This 20th day of September, 2017, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge