Cooke v. Department of Corrections for the State of Maryland Doc. 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC SEBASTIAN COOKE *

Plaintiff *

v * Civil Action No. ELH-16-3552

DEPARTMENT OF CORRECTIONS FOR THE STATE OF MARYLAND *

*

Defendant

***

MEMORANDUM OPINION

Plaintiff Eric Cooke filed a supplemental complaint (ECF 5) in the above-entitled case following my Order (ECF 4) granting him 28 days to correct noted deficiencies in the original complaint (ECF 1). Cooke's original complaint did not name a proper party as a defendant and failed to provide enough detail about the claims raised for proper screening of the complaint. See ECF 4.

In the supplemental complaint Cooke names as defendants "Division of Corrections (MRDCC – BCCC), Warden Tina Stump, 'et al'/ Wexford Medical Staff." ECF 5 at 1. The Clerk will be directed to add the named defendants to the docket. Cooke's pending motions to proceed in forma pauperis (ECF 2 and ECF 6) shall be granted. But, for the reasons set forth below, the complaint, as supplemented, must be dismissed.

I. Factual Background

Cooke's claim, as clarified in his supplemental complaint, is that unnamed medical staff at Maryland Reception, Diagnostic and Classification Center ("MRDCC") and Baltimore City Correctional Center ("BCCC") directed him to "drink plenty of fluids" to treat symptoms of constipation. ECF 5 at 3. He states he followed the directive from August 14 through

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September 4 at BCCC, and from September 4 through October 13 at MRDCC.[1] Cooke asserts he was also prescribed laxatives, which required his consumption of 64 ounces of water a day. Id. at 3 – 4. But, he later found out that the water at both institutions is contaminated. Id. He claims he did not begin feeling better until he was transferred to the Dorsey Run Correctional Facility ("DRCF") in Jessup, Maryland. Id. at 4. Cooke alleges he still gets headaches and suffers other unspecified abnormalities, which he attributes to consumption of the tainted water at MRDCC and BCCC. Id.

Cooke asserts he filed an administrative complaint with Warden Stump "about the cruel and unusual punishment of the Wexford Medical staff [and] also about being subjected to contaminated water." ECF 5 at 4. Further, he claims that Stump is responsible for conditions at both MRDCC and BCCC. Id. He adds that he was "not given [his] due process" because he did not receive a parole hearing from the Maryland Parole Commission, despite becoming eligible for parole consideration in May 2016. Id.

II. Standard of Review

This Court is obliged by 28 U.S.C. §1915(a)(1) to screen prisoner complaints and dismiss any complaint that is frivolous, malicious or fails to state a claim upon which relief may be granted. In deciding whether a complaint is frivolous, "[t]he district court need not look beyond the complaint's allegations . . . . It must, however, hold the pro se complaint to less stringent standards than pleadings drafted by attorneys and must read the complaint liberally." White v. White, 886 F.2d 721, 722-23 (4th Cir. 1989); see also Erickson v. Pardus, 551 U.S. 89, 94 (2007).

[1] Cooke does not provide the year for the dates provided. ECF 5 at 3.

Under the provisions of 28 U.S.C. § 1915(e)(2), a case shall be dismissed at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

Whether a complaint states a claim for relief is assessed by reference to the pleading requirements of Fed. R. Civ. P. 8(a)(2). Rule 8 provides that a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. See Migdal v. Rowe Price-Fleming Int*'l Inc*., 248 F.3d 321, 325-26 (4th Cir. 2001); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513 (2002) (stating that a complaint need only satisfy the "simplified pleading standard" of Rule 8(a)). The purpose of the rule is to provide the defendant with "fair notice" of the claim and the "grounds" for entitlement to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56 n. 3 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662 (2009).

A plaintiff need not include "detailed factual allegations" in order to satisfy Rule 8(a)(2). Twombly, 550 U.S. at 555. Moreover, federal pleading rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." Johnson v. City of Shelby, —— U.S. ——, 135 S.Ct. 346, 346 (2014) (per curiam). But, the rule demands more than bald accusations or mere speculation. Twombly, 550 U.S. at 555; see Painter's Mill Grille, LLC v. Brown, 716 F.3d 342, 350 (4th Cir. 2013). To satisfy the minimal requirements of Rule 8(a) (2), the complaint must set forth "enough factual matter (taken as true) to suggest" a cognizable cause of action, "even if ... [the] actual proof of those facts is improbable and ... recovery is very remote and unlikely." Twombly, 550 U.S. at 556. In other words, the complaint must contain facts sufficient to "state a claim to relief that is plausible on its face." Id. at 570; see

Iqbal, 556 U.S. at 684; Simmons v. United Mortg. & Loan Inv., LLC, 634 F.3d 754, 768 (4th Cir. 2011).

Fed. R. Civ. P. 12(b)(6) governs a motion to dismiss for failure to state a claim upon which relief may be granted. In construing a motion under Rule 12(b)(6), this court must accept all well-pleaded allegations of the complaint as true and construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff. Venkatraman v. REI Sys., Inc., 417 F.3d 418, 420 (4th Cir. 2005) (citing Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993)); see E.I. du Pont de Nemours & Co. v. Kolon Industries, Inc., 637 F.3d 435, 440 (4th Cir. 2011); (citations omitted); see also Kendall v. Balcerzak, 650 F.3d 515, 522 (4th Cir.), cert. denied, 132 S.Ct. 402 (2011); Monroe v. City of Charlottesville, 579 F.3d 380, 385–86 (4th Cir. 2009), cert. denied, 559 U.S. 991 (2010). However, a complaint that provides no more than "labels and conclusions," or "a formulaic recitation of the elements of a cause of action," is insufficient. Twombly, 550 U.S. at 555. Moreover, the court is not required to accept legal conclusions drawn from the facts. See Papasan v. Allain, 478 U.S. 265, 286 (1986); Monroe, 579 F.3d at 385–86.

A Rule 12(b)(6) motion will be granted if the "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Iqbal, 556 U.S. at 679 (citation omitted). "A court decides whether [the pleading] standard is met by separating the legal conclusions from the factual allegations, assuming the truth of only the factual allegations, and then determining whether those allegations allow the court to reasonably infer" that the plaintiff is entitled to the legal remedy sought. A Society Without A Name v. Virginia, 655 F.3d 342, 346 (4th Cir.2011), cert. denied, —— U.S. ——, 132 S.Ct. 1960 (2012). "'Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to

support a cognizable legal theory.' " Hartmann v. Calif. Dept. of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013) (citation omitted); accord Commonwealth Prop. Advocates, LLC v. Mortg. Elec. Reg. Sys., Inc., 680 F.3d 1194, 1201–02 (10th Cir.2011) ("Dismissal is appropriate if the law simply affords no relief.").

III. Discussion

The Eighth Amendment prohibits "unnecessary and wanton infliction of pain" by virtue of its guarantee against cruel and unusual punishment. Gregg v. Georgia, 428 U.S. 153, 173 (1976); see also Estelle v. Gamble, 429 U.S. 97, 102 (1976); Scinto v. Stansberry, 841 F.3d 219, 225 (4th Cir. 2016); King v. Rubenstein, 825 F.3d 206, 218 (4th Cir. 2016). In order to state an Eighth Amendment claim for denial of medical care, a plaintiff must demonstrate that the actions of the defendant or her failure to act amounted to deliberate indifference to a serious medical need. See Estelle, 429 U.S. at 106; Jackson v. Lightsey, 775 F.3d 170, 178 (4th Cir. 2014); Iko v. Shreve, 535 F.3d 225, 241 (4th Cir. 2008). The Fourth Circuit has characterized the applicable standard as an "exacting" one. Lightsey, 775 F.3d at 178.

Deliberate indifference to a serious medical need requires proof that, objectively, the prisoner plaintiff was suffering from a serious medical need and that, subjectively, the prison staff were aware of the need for medical attention but failed either to provide it or to ensure that the needed care was available. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); King, 825 F.3d at 219. 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.'" Iko, 535 F.3d at 241 (quoting Henderson v. Sheahan, 196 F.3d 839, 846 (7th Cir. 1999)); see Scinto, 841 F.3d at 228. And, in a case involving a claim of

deliberate indifference to a serious medical need, the inmate must show a "significant injury." Danser v. Stansberry, 772 F.3d 340, 346 n.8 (4th Cir. 2014).

Proof of an objectively serious medical condition does not end the inquiry. The subjective component requires a determination as to whether the defendant acted with "a sufficiently culpable state of mind." Wilson v. Seiter, 501 U.S. 294, 298 (1991); see Farmer, 511 U.S. at 839-40; Scinto, 841 F.3d at 225. Put another way, "[t]o show an Eighth Amendment violation, it is not enough that an official should have known of a risk; he or she must have had actual subjective knowledge of both the inmate's serious medical condition and the excessive risk posed by the official's action or inaction." Lightsey, 775 F.3d at 178.

The Fourth Circuit has said: "True subjective recklessness requires knowledge both of the general risk, and also that the conduct is inappropriate in light of that risk." Rich v. Bruce, 129 F.3d 336, 340 n.2 (4th Cir. 1997); see also Young v. City of Mt. Ranier, 238 F.3d 567, 575-76 (4th Cir. 2001). As the Farmer Court explained, 511 U.S. at 837, reckless disregard occurs when a defendant "knows of and disregards an excessive risk to inmate health or safety; 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." Thus, "[a]ctual knowledge or awareness on the part of the alleged inflicter . . . becomes essential to proof of deliberate indifference 'because prison officials who lacked knowledge of a risk cannot be said to have inflicted punishment.'" Brice v. Va. Beach Corr. Center, 58 F.3d 101, 105 (4th Cir. 1995) (quoting Farmer, 511 U.S. at 844).

Notably, deliberate indifference "is a higher standard for culpability than mere negligence or even civil recklessness" and, "as a consequence, many acts or omissions that would constitute medical malpractice will not rise to the level of deliberate indifference." Lightsey, 775 F.3d at

178; see also Scinto, 841 F.3d at 225; Russell v. Sheffer, 528 F.2d 318, 319 (4th Cir. 1975); Donlan v. Smith, 662 F. Supp. 352, 361 (D. Md. 1986). What the Court said in Grayson v. Peed, 195 F.3d 692, 695- 96 (4th Cir. 1999), resonates here: "Deliberate indifference is a very high standard – a showing of mere negligence will not meet it . . . [T]he Constitution is designed to deal with deprivations of rights, not errors in judgments, even though such errors may have unfortunate consequences . . . To lower this threshold would thrust federal courts into the daily practices of local police departments."

Although the deliberate indifference standard "'entails more than mere negligence . . . it is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.'" King, 825 F.3d at 219 (quoting Farmer, 511 U.S. at 835). A plaintiff can meet the subjective knowledge requirement through direct evidence of a prison official's actual knowledge or through circumstantial evidence tending to establish such knowledge, including evidence "'that a prison official knew of a substantial risk from the very fact that the risk was obvious.'" Makdessi v. Fields, 789 F.3d 126, 133 (4th Cir. 2015) (quoting Farmer, 511 U.S. at 842).

Moreover, if a risk is obvious, a prison official "cannot hide behind an excuse that he was unaware of a risk, no matter how obvious." Brice, 58 F.3d at 105. In Scinto, 841 F.3d at 226, the Fourth Circuit said:

> A plaintiff also makes out a prima facie case of deliberate indifference when he demonstrates "that a substantial risk of [serious harm] was longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official . . . had been exposed to information concerning the risk and thus must have known about it . . . ." Parrish ex rel. Lee v. Cleveland, 372 F.3d 294, 303 (4th Cir. 2004) (first alteration in original) (internal quotation marks omitted) (quoting Farmer, 511 U.S. at 842). Similarly, a prison official's "[f]ailure to respond to an inmate's known medical needs raises an inference [of] deliberate indifference to those needs." Miltier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990), overruled in part on other grounds by

Farmer, 511 U.S. at 837.

Even if the requisite subjective knowledge is established, an official may still avoid liability if he "responded reasonably to the risk, even if the harm was not ultimately averted." Farmer, 511 U.S. at 844; see Scinto, 841 F.3d at 226. Reasonableness of the actions taken must be judged in light of the risk the defendant actually knew at the time. See Brown v. Harris, 240 F. 3d 383, 390 (4th Cir. 2000) (citing Liebe v. Norton, 157 F. 3d 574, 577 (8th Cir. 1998) (focus must be on precautions actually taken in light of suicide risk, not those that could have been taken)).

In essence, the treatment rendered must be so grossly incompetent or inadequate as to shock the conscience or to be intolerable to fundamental fairness. Miltier v. Beorn, 896 F.2d 848, 851 (4th Cir. 1990) (citation omitted) (overruled in part on other grounds by Farmer, 511 U.S. at 837. But, of significance here, the right to treatment is "limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable." Bowring v. Godwin, 551 F.2d 44, 47-48 (4th Cir. 1977) (emphasis added). Thus, inmates do not have a constitutional right to the treatment of their choice. Dean v. Coughlin, 804 F.2d 207, 215 (2nd Cir. 1986). And, disagreements between an inmate and medical staff as to the need for or the appropriate extent of medical treatment do not give rise to a constitutional injury. See Estelle, 429 U.S. at 105-06; Wright v. Collins, 766 F.2d 841, 849 (4th Cir. 1985) (citing Gittlemacker v. Prasse, 428 F.2d 1, 6 (3rd Cir. 1970)); see also Fleming v. LeFevere, 423 F.Supp.2d 1064, 1070-71 (C.D. Cal. 2006).

The narrative provided by Cooke does not state a colorable constitutional claim. His bald assertion that medical staff subjected him to cruel and unusual punishment is unaccompanied by

any allegation that he suffered from a serious medical condition to which they were deliberately indifferent.

Indeed, on the face of the supplemental complaint Cooke admits that he received treatment for a condition (constipation) that ordinarily is not a serious medical need. Notably, Cooke does not allege that medical staff who directed him to "drink plenty of fluids" knew that the water he consumed was "contaminated." Moreover, Cooke himself points to no evidence that the water was in fact contaminated, other than his own belief and the claim that his symptoms improved when he was transferred to another region of the state. Given that there is no allegation that the prescribing doctors knew Cooke was drinking contaminated water or that the directive to drink fluids somehow constitutes substandard medical care, that claim is also facially deficient.

Cooke's claim as to Warden Stump is based in part on a theory of respondeat superior. It is well established that the doctrine of respondeat superior does not apply in § 1983 claims. Supervisory officials are liable only for their own wrongdoing or for supervisory actions where they are aware that their subordinates have engaged in pervasive and unconstitutional conduct. *See Monell v. New York Dep't of Social Serv.*, 436 U.S. 658, 691 (1978); Love-Lane v. Martin, 355 F.3d 766, 782 (4th Cir. 2004) (no respondeat superior liability under § 1983). Liability of supervisory officials "is not based on ordinary principles of respondeat superior, but rather is premised on 'a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.'" Baynard v. Malone, 268 F.3d 228, 235 (4th Cir. 2001) (quoting Slakan v. Porter, 737 F.2d 368, 372 (4th Cir. 1984)).

In Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994), cert. denied, 513 U.S. 813 (1994),

the Fourth Circuit set forth three elements that a plaintiff must prove to establish supervisory liability under § 1983:

> (1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury to citizens like the plaintiff; (2) that the supervisor's response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices,"; and (3) that there was an "affirmative causal link" between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.

See also King, 825 F.3d at 224 (applying the Shaw elements); Armstrong v. City of Greensboro, ___ F. Supp. 3d ___, 2016 WL 3167178, at *11 (M.D.N.C. June 6, 2016) (same); Kitchen v. Ickes, 116 F. Supp. 3d 613, 629 (D. Md. 2015) (same), aff'd, 644 F. App'x 243 (4th Cir. 2016), cert. denied, ___ U.S. ___, 2016 WL 5874521 (Dec. 5, 2016).

According to the Shaw Court, to satisfy the first element, a plaintiff must show "(1) the supervisor's knowledge of (2) conduct engaged in by a subordinate (3) where the conduct poses a pervasive and unreasonable risk of constitutional injury to the plaintiff." 13 F.3d at 799 (citing Slakan v. Porter, 737 F.2d 368, 373 (4th Cir. 1984)). And, establishing a "pervasive" and "unreasonable" risk of harm "requires evidence that the conduct is widespread, or at least has been used on several different occasions and that the conduct engaged in by the subordinate poses an unreasonable risk of harm of constitutional injury." Shaw, 13 F.3d at 799.

Here there is no evidence that Cooke was denied medical care for a serious medical need, vitiating any theory of liability against Warden Stump based on the care provided.

To the extent Cooke's complaint can be read to include an Eighth Amendment claim regarding conditions of confinement, that claim also fails. Conditions which "deprive inmates of the minimal civilized measure of life's necessities" may amount to cruel and unusual punishment. Rhodes v. Chapman, 452 U.S. 337, 347 (1981). However, conditions which are merely

restrictive or even harsh, "are part of the penalty that criminal offenders pay for their offenses against society." Id.

> In order to establish the imposition of cruel and unusual punishment, a prisoner must prove two elements - that 'the deprivation of [a] basic human need was objectively sufficiently serious,' and that 'subjectively the officials acted with a sufficiently culpable state of mind.'

Shakka v. Smith, 71 F.3d 162, 166 (4th Cir. 1995) (emphasis in original) (citation omitted). "These requirements spring from the text of the amendment itself; absent intentionality, a condition imposed on an inmate cannot properly be called "punishment," and absent severity, such punishment cannot be called "cruel and unusual." Iko v. Shreve, 535 F.3d 225, 238 (4th Cir. 2008) (citing Wilson v. Seiter, 501 U.S. 294, 298-300 (1991)).

To establish a sufficiently culpable state of mind, there must be evidence that a known excessive risk of harm to the inmate's health or safety was disregarded. See Wilson, 501 U.S. at 298-99. In other words, "the test is whether the guards know the plaintiff inmate faces a serious danger to his safety and they could avert the danger easily yet they fail to do so." Brown v. N.C. Dep't of Corr., 612 F.3d 720, 723 (4th Cir. 2010) (quoting Case v. Ahitow, 301 F.3d 605, 607 (7th Cir. 2002)). Conduct is not actionable under the Eighth Amendment unless it transgresses bright lines of clearly-established pre-existing law. See Maciariello v. Sumner, 973 F.2d 295, 298 (4th Cir. 1992).

The vague claims put forth by Cooke that the water was contaminated, and that he still gets headaches and suffers other abnormalities, simply fall short of a viable Eighth Amendment claim regarding conditions. "Only extreme deprivations are adequate to satisfy the objective component of an Eighth Amendment claim regarding conditions of confinement." De'Lonta v. Angelone, 330 F.3d 630, 634 (4th Cir. 2003). Demonstration of an extreme deprivation proscribed by the Eighth Amendment requires proof of "a serious or significant physical or

emotional injury resulting from the challenged conditions." *See Odom v. S.C. Dep't of Corr.*, 349 F.3d 765, 770 (4th Cir. 2003) (quoting *De'Lonta*, 330 F.3d at 770).

With regard to Cooke's claim that he was not given a parole hearing in a timely manner, it does not state a due process claim. "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 7 (1979). "It is therefore axiomatic that because . . . prisoners have no protected liberty interest in parole they cannot mount a challenge against a state parole review procedure on procedural (or substantive) Due Process grounds." Johnson v. Rodriguez, 110 F.3d 299, 308 (5th Cir. 1997).

To the extent that state law requires that Cooke be provided a parole consideration hearing after serving a portion of his sentence, his claim may be raised in an appropriate state forum in an action for mandamus seeking an order requiring the Maryland Parole Commission to provide the hearing. See Md. Rule 15-701. This court does not have jurisdiction to issue a writ of mandamus requiring state employees to act. Gurley v. Superior Court of Mecklenburg Cty., 411 F.2d 586, 587 (4th Cir. 1969).

An Order granting plaintiff's pending motions to proceed in forma pauperis and dismissing the complaint follows.

March 6, 2017
Date

/s/
Ellen L. Hollander
United States District Judge