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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

07-CV-02084-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES D. WILKS,

Plaintiff,

v.
SGT. STOWERS, et al.,

Defendants.

Case No. C07-2084 MJP

ORDER ON DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
ORDER OF CONSOLIDATION

This matter comes before the Court on Defendants' motion for partial summary judgment. (Dkt. No. 16.) Having reviewed the motion, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge (Dkt. No. 28), Defendants' objections to that recommendation (Dkt. No. 29), and the balance of the record, the Court orders as follows.

The Court adopts the Report and Recommendation of Magistrate Judge Mary Alice Theiler. Defendants' motion for partial summary judgment is GRANTED as to Plaintiff's deprivation of property and retaliation claims, and as to Plaintiff's claim that he was placed in a dirty cell which Defendants refused to clean. Defendants' motion is DENIED as to the remainder of Plaintiff's claims of improper punishment/unconstitutional conditions of

1 confinement, and as to his claims of inadequate medical care. In light of Mr. Wilks' failure to
2 respond to both the motion for partial summary judgment and the report and recommendation by
3 Magistrate Judge Theiler, the Court will allow Defendants to bring a second motion for summary
4 judgment on the claims that were not dismissed.

5 Also remaining in this action are Mr. Wilks' claims alleging excessive use of force. (Dkt.
6 No. 5 ¶¶ A, I, J, T.) Defendants concede that these claims "may require factual determinations at
7 a jury trial of this matter." (Dkt. No. 16 at 1.) Mr. Wilks brings his use of force claims against:
8 (1) Sergeant Vernetta Stowers; (2) Officer E. Taylor; (3) Officer Dang; and (4) Officer
9 Holloman. (Dkt. No. 5.)

10 Mr. Wilks has an additional action pending in this Court with allegations stemming from
11 the same period of incarceration at King County Correctional Facility ("KCCF"). See Wilks v.
12 Stowers, No. C08-386 MJP (W.D. Wash. filed April 9, 2008). Also remaining in that action are
13 Mr. Wilks' claims alleging excessive use of force. As in this action, Mr. Wilks brings his use of
14 force claims against King County employees working in the KCCF. Because of the similarity of
15 the allegations and overlapping Defendants, this Court finds it appropriate to consolidate the two
16 actions under Case Number C08-386 MJP.

17 On January 13, 2009, the Court issued an order in C08-386 directing appointment of
18 counsel for Mr. Wilks and vacating all previously scheduled deadlines until counsel is appointed.
19 (C08-386 MJP Dkt. No. 29.) Having consolidated these two actions, the pending deadlines in
20 C07-2084 MJP are also vacated until counsel is appointed. Once Mr. Wilks is represented by
21 counsel, the Court will issue a new scheduling order that will allow Defendants to bring an
22 additional motion for summary judgment.

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Conclusion

Defendants' partial motion for summary judgment is GRANTED in part and DENIED in part. This action is hereby consolidated with C08-386 MJP. Until Mr. Wilks is appointed counsel, all previously scheduled deadlines are vacated.

Dated: April 6, 2009



Hon. Marsha J. Pechman