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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

HENRY JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	16-2369
	)	
MATTHEW ROBERTS, *et al.*	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, proceeding pro se and presently incarcerated at FCI Pekin, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging inhumane conditions-of-confinement arising from events that transpired while he was detained at Jerome Combs Detention Center. The matter comes before this Court for ruling on the Defendant's Motion for Summary Judgment. (Doc. 24). The motion is granted.

LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). The party moving for summary judgment must show the lack of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to be a "genuine" issue, there must be more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Only disputes over facts that

might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FACTS

Plaintiff was a pretrial detainee at Jerome Combs Detention Center ("JCDC") in Kankakee, Illinois from September 12, 2016 through February 23, 2017. Defendant was employed as a correctional officer at the facility.

On November 11, 2016, Defendant gave Plaintiff an electric razor at Plaintiff's request. Electric razors are available to JCDC inmates upon request, and, when available, alcohol pads are also provided to allow the inmates to clean the razors. Alternatively, inmates may request use of a disposable razor through the medical unit. Despite making these items available to inmates, JCDC's personal hygiene policy does not require inmates to shave unless they are employed as inmate workers or housing unit workers. (Doc. 24-3 at 11). Plaintiff does not assert he was employed as either.

Plaintiff described the razor he received as "filthy," and he testified in his deposition that his request for sanitizer was denied because Defendant did not have any at the time. Pl.'s Dep. 10:1-5. According to Plaintiff, Defendant told him to "use some water to rinse them off." *Id.* Plaintiff testified that the razor remained dirty after following these instructions. *Id.* 15:5-20. Nonetheless, Plaintiff used the electric razor to shave his head.

Plaintiff testified that an itchy bump developed on his head shortly thereafter. *Id.* 13:14-17. JCDC medical staff diagnosed the bump as a fungal infection, and prescribed Plaintiff a 14-day course of antibiotics, steroids, and anti-fungal medication. (Doc. 24-1 at 24-25). Plaintiff did not take the medication in the dosage, or at the frequency, prescribed, as he testified that he was still taking the medication a couple months later. Pl.'s Dep. 30:22-31:15. The cause of the

infection, according to JCDC's medical staff, was a fungus that grows naturally on a person's skin that is not contagious. Huffines Aff. ¶ 5-6 (Doc. 24-4 at 1-2).

Plaintiff did not use the razor on any other occasion. Both prior to, and after, the above incident, Plaintiff used "Magic Shave," a hair removal product available in the JCDC commissary, for his hair removal needs.

ANALYSIS

As a pretrial detainee, Plaintiff's claims arise under the Due Process Clause of the Fourteenth Amendment rather than the Eighth Amendment's proscription against cruel and unusual punishment. *Burton v. Downey*, 805 F.3d 776, 784 (7th Cir. 2015). Nonetheless, courts analyze a pretrial detainee's conditions-of-confinement claim under the Eighth Amendment standard. *Id.* (citing *Smego v. Mitchell*, 723 F.3d 752, 756 (7th Cir. 2013)). To prevail, a plaintiff must show that prison officials were deliberately indifferent towards an objectively serious risk of harm. *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008).

A prison condition is objectively serious if "a prison official's act or omission result[ed] in the denial of the minimal civilized measure of life's necessities." *Farmer v. Brennan,* 511 U.S. 832, 834 (1994) (internal quotation marks omitted); *see also Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006). Jail conditions may be uncomfortable and harsh without violating the Constitution. *See Dixon v. Godinez*, 114 F.3d 640, 642 (7th Cir.1997); *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir.1996) ("The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones[.]" (citing *Farmer*, 511 U.S. at 832)). Therefore, "extreme deprivations are required to make out a conditions-of-confinement claim." *Henderson v. Sheahan*, 196 F.3d 849, 845 (7th Cir.1999).

Plaintiff argues that Defendant exposed him to an unreasonable risk of infection presented by an electric razor Defendant knew was unsanitary—Defendant should not have given him the razor until proper cleaning supplies were available. Using another person's shaving razor could expose a person to a risk of contracting a serious illness, *see Pegues v. Scott*, 2016 WL 8941214, at *1 (C.D. Ill., filed Feb. 3, 2016) (collecting cases), but nothing in Plaintiff's description of the razor Defendant gave him suggests that such a risk was present. Plaintiff does not allege he saw blood on the razor or that the razor contained any other indicia of a potential risk of infection. Plaintiff says only that razor was "dirty" without further description, and that it was common knowledge that more than 20 inmates used the razor every day. Even so, no reasonable inference exists that the communal use of the razor exposed Plaintiff to a serious risk of harm—Plaintiff does not assert that communicable diseases were widespread throughout the facility, or that any particular inmate who used the razor suffered from such an illness.

Nonetheless, Plaintiff had access to running water to attempt to clean the razor prior to its use, Magic Shave was available for purchase via commissary, and Plaintiff could have requested a disposable razor through the medical unit. Given the availability of these alternatives, and the fact that JCDC policy did not require Plaintiff to shave, no reasonable inference arises that Plaintiff was forced to use the razor at the time Defendant gave it to him. Plaintiff believed the razor was unsanitary at the time that he used it; thus, he cannot now claim the consequences of his decision to use it anyway violated his constitutional rights. *See Freeman v. Berge*, 441 F.3d 543, 545 (7th Cir. 2006) (an "author of his own deprivation" is not a victim of unconstitutional punishment).

Moreover, Plaintiff cannot show that Defendant acted with deliberate indifference. Deliberate indifference is more than negligence, but does not require the plaintiff to show that the officials intended to cause harm. *Mayoral v. Sheehan*, 245 F.3d 934, 938 (7th Cir. 2001). Liability attaches when "the official knows of and disregards an excessive risk to inmate health or safety; the official 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).

At best, Defendant knew that the razor was used by other inmates and that the razor was "dirty" at the time he gave it to Plaintiff. Plaintiff does not assert that Defendant knew that the razor was dirty after Plaintiff rinsed it off, nor does the record support such an inference. As noted above, the record also does not disclose that other inmates using the razor had been infected with a communicable disease, or that the risk of infection would have been obvious to prison officials. Accordingly, the Court finds that no reasonable juror could conclude that Defendant violated Plaintiff's constitutional rights. Defendant, therefore, is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED:

1) **Defendant's Motion for Summary Judgment [24] is GRANTED. The clerk of the court is directed to enter judgment in favor of Defendant and against Plaintiff. All pending motions not addressed below are denied as moot, and this case is terminated, with the parties to bear their own costs. Plaintiff remains responsible for the $350.00 filing fee.**

2) **If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626,**

632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 24th day of April, 2018.

s/Sara Darrow
SARA DARROW
UNITED STATES DISTRICT JUDGE