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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

JOSE JUAN URENA LOPEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	15-2149
	)	
CHIEF CHAD KOLITWENZEW, *et al.*	)	
	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, proceeding pro se and presently incarcerated at FCI Bennettsville in Bennettsville, South Carolina, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging a Fourteenth Amendment procedural due process claim and a claim for inadequate medical care arising from his pretrial detention at Jerome Combs Detention Center. The matter comes before this Court for ruling on the Defendants' Motions for Summary Judgment. (Doc. 51). Plaintiff did not respond to this motion. 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

As an initial matter, Plaintiff did not respond to Defendants' motion for summary judgment, despite being warned of the potential consequences for failing to do so. See (Doc. 52).

Accordingly, the Court considers the facts asserted in Defendants' motion as undisputed for purposes of this ruling. See Fed. R. Civ. P. 56(e)(2).

Plaintiff was detained at Jerome Combs Detention Center ("JCDC") from May 17, 2013, through May 27, 2015. Defendants were employed at the facility in the following capacities: Defendant Kolitwenzew was the Chief of Corrections; Defendants Tofari and Krumweide were correctional officers; Defendant Huffines was a physician's assistant; and, Defendant Gill (formerly Pasel) was a nurse.

Plaintiff was housed in the C Dormitory ("C Dorm"), a "direct supervision, minimum security dormitory housing unit in JCDC," beginning in December 2013. After being found guilty of fighting and failure to follow rules during a lockdown in September 2014 and October 2014, respectively, Plaintiff's security classification changed. He was then housed in E Pod with other medium and maximum security detainees. On December 2, 2014, Plaintiff returned to C Dorm.

In the morning of December 5, 2014, a non-defendant correctional officer observed Plaintiff trying to start fights with other

inmates. Blanchette Aff. ¶ 7 (Doc. 51-13 at 1). After another inmate told JCDC staff that he had seen Plaintiff with a two-to-three-inch shank (makeshift knife), Defendant Tofari ordered other officers to shakedown Plaintiff's bunk. Officers found a "contraband pen and staple" during the search that ensued.

Plaintiff later informed JCDC staff that he had been struck in the head earlier in the day. Plaintiff could not provide any information regarding the identity of the assailant, the location of the attack, or the specific time that he was hit. JCDC officers observed slight bruising above Plaintiff's eye, and Plaintiff said he felt pain on his left side. Officers told Plaintiff to fill out a medical request form.

Plaintiff was transferred to administrative segregation pending an investigation into the assault Plaintiff alleged. Plaintiff's other behavior that morning (trying to start fights, possession of contraband, evasiveness in answering questions) also factored into the decision. Plaintiff did not receive a hearing prior to this transfer, and he was later reclassified as a maximum security inmate based upon his disciplinary history. Plaintiff remained in a maximum security area for the remainder of his detention at JCDC.

Inmates housed in the maximum security area are housed in a double-bunked cell, as opposed to a bunk in a dormitory setting, and they are limited to one hour in the dayroom each day.

Medical staff received Plaintiff's request for medical care on December 10, 2014. The date Plaintiff submitted this request is unclear—Plaintiff dated the request December 9, 2014 in the line next to his signature, but the form also contains a notation in the upper right hand corner that reads: "I request medical 12/05/14 Tsame [sic]." (Doc. 51-3 at 18). At any rate, Defendant Huffines examined Plaintiff on December 12, 2014.

According to the medical records, Plaintiff told Defendant Huffines that he had been struck in the lower part of his jaw and that he fell, injuring his left side. (Doc. 52-3 at 19). Plaintiff denied loss of consciousness, loss of strength or sensation in the affected areas, and any nausea or vomiting. Defendant Huffines did not note any indicia of an injury to Plaintiff's lungs or heart upon examination. As for Plaintiff's jaw, Defendant Huffines observed only mild bruising with little swelling, no stiffness, no restricted range of motion secondary to pain, no bleeding, no broken teeth, no

difficulty breathing, and no other indicia of fracture or dislocation. Huffines Aff. ¶ 11 (Doc. 51-3 at 3).

Defendant Huffines prescribed 800mg of ibuprofen every 8 hours as needed for pain, and he ordered x-rays of Plaintiff's ribs. Defendant Huffines opined, however, that x-rays of Plaintiff's jaw were not necessary based on his observations. Id. at 20. X-rays disclosed "an acute fracture of the left lateral 9th rib and possibly the 10th," with no other complications. Id. at 21. Based on this, Defendant Huffines opined that only pain medication was necessary at that time, which Plaintiff had already been prescribed. Plaintiff was advised to return if symptoms changed or worsened. Plaintiff did not make any further treatment requests for these injuries.

In February 2015, Plaintiff complained of pain in his lower right abdomen. Defendant Huffines ordered a computerized topography (CT) scan and a urine test, which later revealed acute appendicitis. Surgeons at an outside hospital successfully performed an appendectomy without complications. There was no indication that Plaintiff's appendix had burst or that Plaintiff suffered from an infection. Defendant Huffines performed a follow-

up examination where he observed that Plaintiff's wound was healing well and Plaintiff complained only of soreness.

Finally, Plaintiff reported in April 2015 that he was coughing up blood. Defendant Huffines could not determine the cause of this symptom, and he referred Plaintiff to an otolaryngologist (ENT) for further examination. (Doc. 51-3 at 37). Plaintiff was transferred from the facility before the appointment could be scheduled.

ANALYSIS

Pretrial detainees have a right to adequate medical care, but unlike convicted prisoners whose right to medical care arises under the Eighth Amendment, the Due Process Clause of the Fourteenth Amendment provides the basis for relief. Burton v. Downey, 805 F.3d 776, 784 (7th Cir. 2015) (citing Pittman v. Cnty. of Madison, 746 F.3d 766, 775 (7th Cir. 2014)). To prevail, Plaintiff must show that an official's deliberate or reckless conduct was objectively unreasonable. Miranda v. Cty. of Lake, --- F.3d ---, 2018 WL 3796482, at *11-12 (7th Cir. 2018).

Specifically, a plaintiff must show that: (1) the official "acted purposefully, knowingly, or perhaps even recklessly" when taking the actions at issue—negligence, or even gross negligence, will not

suffice; and (2) that those actions were objectively unreasonable. Id. The latter inquiry is case-specific and must be made from the perspective of a reasonable official present at the time the relevant decisions were made, including what the official "knew at the time, not with the 20/20 vision of hindsight." Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015) (citing Graham v. Connor, 490 U.S. 386, 396 (1989)).

Assuming Defendant Huffines' actions were intentional, the record does not permit a reasonable inference that Defendant Huffines' treatment decisions were objectively unreasonable. Plaintiff received x-rays to confirm his broken ribs and he was prescribed pain medication to treat the condition, which is consistent with the treatment usually administered when no other complications are present. See Mayo Clinic, Broken Ribs Diagnosis and Treatment, available at: https://www.mayoclinic.org/diseases-conditions/broken-ribs/diagnosis-treatment/drc-20350769 (last accessed Aug. 24, 2018).

When Plaintiff complained of abdominal pain, Defendant Huffines ordered a CT scan and later sent Plaintiff to an outside hospital for surgery once Plaintiff was diagnosed with appendicitis.

Finally, Defendant Huffines referred Plaintiff to a specialist when Plaintiff said he was coughing up blood.

Plaintiff has not presented any other evidence to suggest that the treatment he received was objectively unreasonable, or that correctional officers acted unreasonably by telling him to fill out a medical request form. Therefore, the Court finds that no reasonable juror could conclude that jail officials violated Plaintiff's constitutional rights with respect to medical care.

Due Process Claim

Plaintiff is not entitled to the procedural protections of the Due Process Clause unless the conditions to which he was later subjected imposed an "atypical and significant hardship…in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). Stated differently, "any person already confined may not nickel and dime his way into a federal claim by citing small, incremental deprivations of physical freedom." Thielman v. Leean, 282 F.3d 478, 484 (7th Cir. 2002). This reasoning applies equally to prisoners and pretrial detainees. Id.; Miller v. Dobier, 634 F.3d 412, 415-16 (7th Cir. 2011) ("Disciplinary measures that do not substantially worsen the conditions of

confinement of a lawfully confined person are not actionable under the due process clause."); Winston v. Scott, 718 F. App'x. 438, 439 (7th Cir. 2018) ("[A] civil detainee's loss of privileges is not a deprivation of a protected liberty interest; thus due process is not at play.").

Plaintiff was transferred to more restrictive area of the jail following several incidents in which he was disciplined for violating JCDC rules. Insofar as the record discloses, Plaintiff was confined in a double-bunked cell after the transfer, and his access to a dayroom was limited to one hour per day. These conditions on their own do not suggest that the increased restrictions Plaintiff faced after his transfer amounted to the "atypical and significant" deprivation required to implicate the procedural protections of the Due Process Clause. Moreover, Plaintiff's temporary detention in administrative segregation pending an investigation into alleged rule violations does not implicate Due Process concerns. See Holly v. Woolfolk, 415 F.3d 678, 680 (7th Cir. 2005).

Accordingly, Plaintiff was not entitled to the procedural protections of the Due Process Clause prior to his disciplinary

transfer. The Court finds that no reasonable juror could conclude that Plaintiff's procedural Due Process rights were violated.

IT IS THEREFORE ORDERED:

1) **Defendants' Motion for Summary Judgment [51] is GRANTED. The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions 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: August 30, 2018.

FOR THE COURT:

s/ Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE