CASREF,PAW

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:11-cv-22496-PAS

Hamlett v. Mozingo et al
Assigned to: Judge Patricia A. Seitz
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 07/11/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Shawn Hamlett
Prisoner ID: DC #C01227

represented by **Shawn Hamlett**
DC #C01227
Charlotte Correctional Institution
33123 Oil Well Road
Punta Gorda, FL 33955
PRO SE

V.

Defendant

Sgt Kenneth Mozingo

represented by **John Bajger**
Attorney General Office
1515 N Flagler Drive
9th Floor
West Palm Beach, FL 33401-3432
Email:
John.Bajger@myfloridalegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Marvin Williams

represented by **John Bajger**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Officer Marshall

represented by **John Bajger**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Wanda Johnson

represented by **John Bajger**
(See above for address)

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

E.J. Johnson represented by **John Bajger**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Warden David Harris
TERMINATED: 10/26/2011

Defendant

Edwin G. Buss
Secretary of the Department of Corrections
TERMINATED: 10/26/2011

Date Filed	#	Docket Text
07/11/2011	1	COMPLAINT under the Civil Rights Act against Edwin G. Buss, David Harris, Johnson(Black Male), Johnson(Black Female), Marshall, Mozingo, Williams. Filing fee $ 350.00. IFP Filed, filed by Shawn Hamlett.(ar2) (Entered: 07/12/2011)
07/11/2011	2	Judge Assignment to Judge Patricia A. Seitz (ar2) (Entered: 07/12/2011)
07/11/2011	3	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003-19 for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (ar2) (Entered: 07/12/2011)
07/11/2011	4	MOTION for Leave to Proceed in forma pauperis by Shawn Hamlett. (ar2) (Entered: 07/12/2011)
08/08/2011	5	NOTICE of Inquiry by Shawn Hamlett (abe) (Entered: 08/09/2011)
08/08/2011	6	NOTICE of Change of Address by Shawn Hamlett (address updated) (abe) Modified on 8/9/2011 (abe). (Entered: 08/09/2011)
08/18/2011	7	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF $350.00 and Granting 4 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 8/16/2011. (tw) (Entered: 08/18/2011)
08/18/2011	8	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 8/16/2011. (tw) (Entered: 08/18/2011)
09/02/2011	9	NOTICE of Change of Address (updated) by Shawn Hamlett (abe) (Entered:

		09/06/2011)
09/02/2011	10	NOTICE To The Court Of Proper Defendants Name, Title, Description and Address by Shawn Hamlett (abe) Modified text to correct description of document on 9/12/2011 (dm). (Entered: 09/06/2011)
09/02/2011	11	NOTICE of change of address and update of defendants 9 (duplicate by Shawn Hamlett (abe) (Entered: 09/06/2011)
09/21/2011	12	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Shawn Hamlett. Recommending 1. It is therefore recommended that the complaint be dismissed against defendants Warden Harris and Edwin Buss, for failure to state a claim pursuant to 28 U.S.C.§1915(e)(2)(B)(ii). 2.The case shall proceed against Officers Mozingo, Williams, Marshall, Johnson and Johnson for use of excessive force and refusal of medical treatment. Objections to R&R due by 10/11/2011. Signed by Magistrate Judge Patrick A. White on 9/21/2011. (tw) (Entered: 09/21/2011)
09/23/2011	13	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Sgt. Kenneth Mozingo[white male, transports inmates from prison to prison]South Florida Reception Center, 14000 N.W. 41 Street, Doral, FL 33178; Sgt. Marvin Williams[black male, works at SFRC T and R Buildings]South Florida Reception Center, 14000 N.W. 41 Street, Doral, FL 33178; Officer Marshall[black male, 6' 8" tall,transports inmates from prisonto prison]South Florida Reception Center, 14000 N.W. 41 Street, Doral, FL 33178; Sgt. Wanda Johnson[black female, transports inmates from prison to prison]South Florida Reception Center, 14000 N.W. 41 Street, Doral, FL 33178 and Sgt. E. J. Johnson[black male, transportsinmates from prison to prison]South Florida Reception Center, 14000 N.W. 41 Street and Doral, FL 33178. Signed by Magistrate Judge Patrick A. White on 9/22/2011. (tw) (Entered: 09/23/2011)
09/23/2011	14	Summons Issued as to E.J. Johnson. (br) (Entered: 09/23/2011)
09/23/2011	15	Summons Issued as to Wanda Johnson. (br) (Entered: 09/23/2011)
09/23/2011	16	Summons Issued as to Marshall. (br) (Entered: 09/23/2011)
09/23/2011	17	Summons Issued as to Kenneth Mozingo. (br) (Entered: 09/23/2011)
09/23/2011	18	Summons Issued as to Marvin Williams. (br) (Entered: 09/23/2011)
10/03/2011	19	SUMMONS (Affidavit) Returned Executed on 1 Complaint Marvin Williams served on 9/28/2011, answer due 10/19/2011. (yha) (Entered: 10/03/2011)
10/03/2011	20	SUMMONS (Affidavit) Returned Executed on 1 Complaint Kenneth Mozingo served on 9/28/2011, answer due 10/19/2011. (yha) (Entered: 10/03/2011)
10/03/2011	21	SUMMONS (Affidavit) Returned Executed on 1 Complaint E.J. Johnson served on 9/28/2011, answer due 10/19/2011. (yha) (Entered: 10/03/2011)
10/03/2011	22	SUMMONS (Affidavit) Returned Executed on 1 Complaint Wanda Johnson served on 9/28/2011, answer due 10/19/2011. (yha) (Entered: 10/03/2011)

10/03/2011	23	SUMMONS (Affidavit) Returned Executed on 1 Complaint Marshall served on 9/28/2011, answer due 10/19/2011. (yha) (Entered: 10/03/2011)
10/17/2011	24	MOTION for Extension of Time to File Response/Reply as to 1 Complaint by E.J. Johnson, Wanda Johnson, Marshall, Kenneth Mozingo, Marvin Williams. (Attachments: # 1 Text of Proposed Order)(Bajger, John) (Entered: 10/17/2011)
10/20/2011	25	ORDER granting 24 Motion for Extension of Time to File Response/Reply re 24 MOTION for Extension of Time to File Response/Reply as to 1 Complaint Responses due by 11/8/2011. Signed by Magistrate Judge Patrick A. White on 10/20/2011. (cz) (Entered: 10/20/2011)
10/26/2011	26	Order Affirming Magistrate Report. Signed by Judge Patricia A. Seitz on 10/26/2011. (jcy) (Entered: 10/26/2011)
11/09/2011	27	ANSWER and Affirmative Defenses to Complaint with Jury Demand by E.J. Johnson, Wanda Johnson, Marshall, Kenneth Mozingo, Marvin Williams. (Bajger, John) (Entered: 11/09/2011)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-22496-CV-SEITZ/WHITE

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

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Case # _____
Judge _____ Mag PAW
Motn Ifp Yes Fee pd $ _____
Receipt # _____

FILED by _____ D.C.
JUL 11 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SHAWN HAMLETT
vs.

CASE NO.: _____
11-22496-CV-SEITZ/WHITE

SGT. MOZINGO
SGT. WILLIAMS
OFFICER MARSHALL
OFFICER JOHNSON (BLACK FEMALE)
OFFICER JOHNSON (BLACK MALE)
WARDEN DAVID HARRIS
SECRETARY OF THE DEPT. OF CORR FOR
FLORIDA EDWIN G. BUSS

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. 1983

I. Parties

In item A below, place your name in the first blank and place your present address in the third blank.

A. Name of plaintiff: SHAWN HAMLETT
Inmate #: C01227
Address: APALACHEE CORRECTIONAL INSTITUTION,
35 APALACHEE DRIVE SNEADS, FLORIDA 32460

In Item B below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use Item C for the names, positions, and places of employment for any additional defendants.

B. Defendant: SGT. MOZINGO
Is employed as A CORRECTION OFFICER
At SOUTH FLORIDA RECEPTION CENTER, 14000 N.W. 41ST STREET DORAL, FLORIDA 33178

C. Additional Defendants: SGT. WILLIAMS
A CORRECTION OFFICER AT THE T AND R BUILDING AT SOUTH FLORIDA RECEPTION CENTER, 14000 N.W. 41ST STREET DORAL, FLORIDA 33178
OFFICER MARSHALL IS EMPLOYED AS A OFFICER AT; SOUTH FLORIDA RECEPTION CENTER 14000 N.W. 41ST STREET DORAL, FLORIDA 33178

OFFICER JOHNSON (BLACK FEMALE) IS EMPLOYED AS, A OFFICER WHOM WORKS IN THE T AND R BUILDING AT S.F.R.C WHOM ASSIST IN TRANSPORTING INMATES ON THE BUS FROM FACILITY TO FACILITY AT, SOUTH FLORIDA RECEPTION CENTER 14000 N.W. 41ST STREET DORAL, FLORIDA 33178

OFFICER JOHNSON (BLACK MALE) IS EMPLOYED AS, A CORRECTIONAL OFFICER WHOM WORKS IN THE T AND R BUILDING AT S.F.R.C WHOM ASSIST IN TRANSPORTING INMATES ON THE BUS FROM FACILITY TO FACILITY AT, SOUTH FLORIDA RECEPTION CENTER 14000 N.W. 41ST STREET DORAL, FLORIDA 33178

WARDEN DAVID HARRIS IS EMPLOYED AS A WARDEN WHOM IS LEGALLY RESPONSIBLE FOR THE OVERALL OPERATION OF SOUTH FLORIDA RECEPTION CENTER AND THE WELFARE OF ALL THE INMATES OF THAT PRISON AT, SOUTH FLORIDA RECEPTION CENTER 14000 N.W. 41ST STREET DORAL, FLORIDA 33178

SECRETARY OF THE DEPARTMENT OF CORRECTION FOR FLORIDA EDWIN G. BUSS WHOM IS LEGALLY RESPONSIBLE FOR THE OVERALL OPERATION OF FLORIDA DEPARTMENT OF CORRECTIONS AND EACH INSTITUTION UNDER ITS DISTRICT, INCLUDING , SOUTH FLORIDA RECEPTION CENTER 2601 BLAIR STONE ROAD, TALLAHASSEE, FLORIDA 32399

EACH DEFENDANT IS BEING SUED INDIVIDUALLY AND IN HIS OR HER OFFICIAL CAPACITY AT ALL TIMES

MENTIONED IN THIS COMPLAINT. EACH DEFENDANT ACTED UNDER THE COLOR OF STATE LAW.

II. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Included also the names of other persons involved, dates, and places.

Do not give any legal arguments or cite and cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach an additional blank page if necessary.

CLAIM # 1 On January 27, 2011 I, Shawn Hamlett had declared a psychological emergency at the Transfer and Reception building at South Florida Reception Center to an Officer named Marshall. Officer Marshall then took the Plaintiff to a Sgt. Williams whom the Plaintiff then reiterated to him that he was declaring a psychological emergency and that he needed to see a psychological doctor immediately because he was having an anxiety attack, and nervous brake down as well as other mental health issues. Sgt. Williams then placed the Plaintiff in handcuffs and put him in a small holding cell by himself. He then assured him that he would be seeing a psychological doctor very soon. At that time which was in the morning hours of Jan 27, 2011 a Sgt. Mozingo who was in charge of driving the busses that transport inmates from Facility to Facility became infuriated and angry by the Plaintiff request for psychological emergency.

Sgt. Mozingo told him that he was faking it and that he did not need any psychological help. Sgt. Mozingo then requested Sgt. Williams to hand over the Plaintiff medical file to him. Sgt. Mozingo, Sgt. Williams and many other officers began reading his medical file. Sgt. Mozingo then came back to the holding cell the Plaintiff was handcuffed in and told him that the only thing he would be receiving is an ass whooping for holding up his progress.

Thereafter, Sgt. Mozingo, Sgt. Williams, Officer Marshall, Officer Johnson (Black male), Officer Johnson (Black Female), and about six other officers entered the holding cell that the Plaintiff was in all alone in handcuffs, and Sgt. Mozingo immediately initiated an attack by striking the Plaintiff in the face with his fist. Immediately all the other officers including Officer Marshall, and Officer Johnson (black male) along with Sgt. Mozingo began to punch, the Plaintiff in the face and body, kick the him in the face and body, knee the him to the face and body and stomp him with their boots to the head, neck and back. The beating continued until the Plaintiff received a concussion from the blows by the officers.

STATEMENT OF CLAIM # 2: When the Plaintiff regained consciousness he was on the ground with Sgt. Mozingo on his back (with his knee in the Plaintiff back) pulling his head backwards with both his hands locked under his chin while his was laid face down. As the Plaintiff yelled in pain another officer was (Officer Johnson black male) twisting his arms in a totally different direction, while another officer was pulling his legs towards his head from behind. While the Plaintiff screamed Sgt. Mozingo began mocking the Plaintiff screaming by singing a song while applying more pressure to his neck by pulling his head backwards even further causing him to scream even more. At that time the Plaintiff heard Officer Johnson (black male) and two other female officers (one older white female, one older black female) laughing at him screaming in pain. Through out the attack Officer Marshall and Officer Johnson (black male) were striking the Plaintiff with punches and kicks.
After the officers placed leg shackles on the Plaintiff ankles, all the Officers got off the Plaintiff including Sgt. Mozingo. As the Plaintiff layed on the floor by the left side of the toilet in shackles unable to move, he was screaming and moaning in pain and had beg the officers to allow him to receive medical treatment because he was injured from the attack that he had sustained from them.

CLAIM # 3: Sgt. Williams, Sgt. Mozingo, Officer Marshall, Officer Johnson (black male) Officer Johnson (black female) declined and all the other officers whom were present in the holding cell, denied the Plaintiff medical treatment for the injuries that he suffered from the attack that he received by them. All the above Officers ignored the Plaintiff request for medical assistance by simply walking out of the holding cell. They left the Plaintiff on the floor of the holding cell bound with handcuffs, waist chain and leg shackles with no medical assistance for the injuries to his neck, back, leg, head, face, and shoulder that he sustained from the beaten they had given him.

CLAIM # 4: As Plaintiff requested Sgt. Mozingo and all the other Officers for medical assistance, plaintiff also requested Sgt. Mozingo, Sgt. Williams, Officer Marshall, Officer Johnson (black male) officer Johnson (black female) and all the other Officers to allow the Plaintiff to see a psychiatric doctor due to a psychological emergency the Plaintiff was experiencing after the physical abuse he sustained by the above Officers. Sgt. Mozingo and the name officers in this claim denied the Plaintiff psychiatric treatment by not reporting the plaintiffs request declaring psychological emergency to see mental health staff.

CLAIM # 5: Sgt. Mozingo, Sgt. Williams, Officer Marshall, Officer Johnson(black male) Officer Johnson(black female) and all the other Officers intentionally deprived the plaintiff medical assistance for the injuries the Plaintiff suffered physically and mentally from the attack in the holding cell; by the defendants by deliberately failing to take any immediate steps to contact medical. This was intentionally done to conceal the abuse inflicted upon the Plaintiff by the Defendants.

CLAIM # 6: Sgt. Mozingo and another Officer dragged the plaintiff out of the holding cell by the neck and leg shackles on the floor, from inside the building, all the way to the bus outside and then lifted the plaintiff and threw the Plaintiff into a metal cage and onto the floor, where the Plaintiff laid in pain for a 4 hour bus ride form South Florida Reception Center to Central Florida Reception Center.

CLAIM # 7: Upon arrival at Central Florida Reception Center the bus was unloaded with all the inmates except the Plaintiff. A black female Officer whom was driving the bus approached the Plaintiff while he was on the bus floor and told the Plaintiff that if he claims any medical injuries that he would be given a disciplinary report. Thereafter Sgt. Mozingo and older white bus driver with the army style brown cap offered the Plaintiff extra sandwiches and cigarette if the Plaintiff did not report the abuse that took place at S.F.R.C. The Plaintiff then told Sgt. Mozingo that he was in extreme pain and need medical assistance. Sgt. Mozingo then became enraged at the Plaintiffs request and Sgt. Mozingo and the other white male Officer threw the Plaintiff out of the bus. The Plaintiff landed on his upper back by his neck. While the Plaintiff was in a daze Sgt. Mozingo grabbed the Plaintiff by the shirt collar and dragged the Plaintiff to the front right wheel of the bus and began to punch the Plaintiff under the chin/jaw area. With every punch Sgt. Mozingo shoved the Plaintiff into the front right tire cap of the bus. A black older male whom was a bus driver for Central Florida Reception Center seen the bruised, injuries and boot marks on the Plaintiff and demanded Sgt. Mozingo to tell him who his Captain was. That Officer called for an area Supervisor, and there after the Plaintiff received medical attention at C.F.R.C. by the efforts of C.F.R.C. personal.

CLAIMS # 8: Due to the physical abuse the plaintiff suffered by the defendants the plaintiff has been taken numerous prescribe medications for the constant pain that he feels throughout his body from the injuries he sustained on Jan 27, 2011. The plaintiff is taken pain medication for the injuries that he received to the neck, back, shoulder, and head. The Plaintiff still experiences dizziness from being kicked to the head and the Plaintiff still experiences a degree of memory loss due to the

concussion he received in the attack inside the holding cell. The Plaintiff still gets headaches from the kicks he received. In addition, to being dropped on his upper back when he was thrown out the bus. X- Rays of the neck has revealed the vertebrate in the neck has deteriorated due to injury that the Plaintiff suffered.

CLAIM # 9: Since the attack on Jan 27, 2011 the Plaintiff has been diagnosed by a psychiatric doctor for posttraumatic stress disorder for the physical abuse the Plaintiff has suffered from the Officers. The Mental Stress has caused the Plaintiff to experience depression.
The Doctor then prescribed psychiatric medication for depression for the Plaintiff in the form of Paxill. Which the Plaintiff has suffered was preceded by a physical attack by the defendants on Jan 27, 2011.

CLAIM # 10: It is a wide spread unwritten practice that officers in D.O.C. Use physical force in various forms upon inmates to deter or deny inmates mental health treatment. This form of abuse is usually disguised with disciplinary reports or as in the Plaintiff situation a confinement investigation. The Officers overall attitude is that inmates are faking mental health issues or that inmates are not worthy of mental health treatment. This attitude comes from lack of properly training the officers when it comes to inmates seeking mental health treatment. Most of the abuse in these forms goes intentionally undocumented. This claim applies to defendants Warden David Harris and Secretary of the Dept. Of Corr. Edwin G. Buss.

CLAIM # 11: Warden David Harris was well aware that use of force was used on the Plaintiff by the Defendants on Jan 27 2011 but failed to get medical treatment for the Plaintiff and failed to discipline the defendants for attacking the Plaintiff.

CLAIM # 12: The Defendants physical attack on the Plaintiff while the Plaintiff was in handcuffs already and also the continued attack by the defendants by dragging the Plaintiff to the bus and attacking the Plaintiff again at Central Florida Reception Center denied the Plaintiff of his Constitutional right against cruel and unusual punishment under the 8th Amendment

CLAIM # 13: The defendants denial of medical treatment after they attacked the plaintiff numerously in two different counties amounted to deliberate indifference to the plaintiffs human needs for medical treatment for the injuries the Plaintiff sustained at the hands of the Defendants and therefore denied the Plaintiff his Constitutional Rights to be free from cruel and unusual punishment under the 8th

Amendment; and denied the Plaintiff his Constitutional Rights to due process under the 14th Amendment.

CLAIM # 14: The mental and emotional injuries the Plaintiff suffers from after the physical attack by the defendants in the form of depression (from posttraumatic stress disorder) has denied the Plaintiff his Constitutional Right to be protected from cruel and unusual punishment under the 8th Amendment. The Plaintiff is in depression and constant anxiety due to the attack.

This is a civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of stat law of rights secured by the constitution of the United States. This Court has jurisdiction under 28 U.S.C 1331 and 1343 (a) (3) over 42 U.S.C. 1983 cases.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The Plaintiff used the prison grievance procedure over six times concerning the complaint herein at Central Florida Reception Center, South Florida Reception Center to try to remedy the incident that took place on Jan 27 2011. Plaintiff received a response at C.F.R.C. stating that the matter was being investigated. Plaintiff appealed to the Secretary of Florida Dept. Of. Corr. Edwin Buss who approved the grievance for the matter to be investigated by the Inspector General Office.

III. **Relief**

State briefly exactly what you want the court do to do for you. Make no legal arguments. Cite no cases or statutes.

Wherefore the Plaintiff respectfully prays that this court enter a judgment granting plaintiffs request for Three hundred thousand dollars $300,000 in compensatory damages. The Plaintiff requests the defendants Sgt. Mozingo, Sgt. Williams, Officer Marshall, and Warden David Harris to pay Plaintiff in punitive damages in the amount of Ten thousand $10,000 for each of the defendants. The Plaintiff requests a jury trial on all issues in the complaint. The Plaintiff request that the defendants pay all court cost related to this suit. The Plaintiff is asking for three hundred thousand dollars $300,000 in compensatory damages from the defendants.

IV. **Jury Demand**

Do you demand a jury trial? ☑ Yes ☐ No

July 6 2011

Signed this _____ day of June, 2011_

(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct. *(optional)*

Executed on: July 6, 2011

(Signature of Plaintiff)

NOTE: TO CLERK of The Court For The Southern District

Include in this Envelope ARE ONE original complaint form with original signature and a copy For the clerk of court and seven (7) copies of the complaints for each defendant which are seven (7) defendants in total. All togeth are 8 (nine) complaints in which the top complaint bares the original copy with original signature.

I am no longer at Apalachee Correctional Institution, I am currently at:

Shawn Hamlett C01227
Reception Medical Center
P.O. Box 628
Lake Butler, Florida 32054

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11 CV 22496 PAS

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

Shawn Hamlett
plaintiff

United States District Court
Southern District of Florida

V.

Sgt. Mozingo et al.

CASE NO: 11-22496-CV-SEITZ

FILED by PEG D.C.
SEP 02 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

NOTICE TO THE COURT OF DEFENDANTS PROPER NAME, TITLE, DESCRIPTION AND ADDRESS. so that they can be served with the complaint (case NO: 11-22496-CV-SEITZ)

1. Sergeant Kenneth Mozingo, white male, transports inmates from prison to prison at, South Florida Reception Center, 14000 N.W. 41st street, Doral, Florida 33178

2. Sergeant Marvin Williams, black male, works at S.F.R.C. at the T and R building at South Florida Reception Center, 14000 N.W. 41st street, Doral, Florida 33178

3. Officer Marshall, black male, six feet eight inches tall, transports inmates from prison to prison at South Florida, Reception Center, 14000 N.W. 41st street, Doral, Florida 33178

4. Sergeant Wanda Johnson, black Female, transports inmates from prison to prison from South Florida Reception Center, 14000 N.W. 41st street, Doral, Florida 33178

5. Sergeant E.J. Johnson, black male, transports inmates from prison to prison from South Florida Reception Center, 14000 N.W. 41st street, Doral, Florida 33178

6. Warden David Harris whom is a warden at South Florida Reception Center 14000 N.W. 41st street, Doral, Florida 33178

7. Secretary Of The Department Of Corrections For Florida Edwin G. Buss whom office is at 501 South Calhoun Street, Tallahassee, Florida 32399

CERTIFICATE OF SERVICE

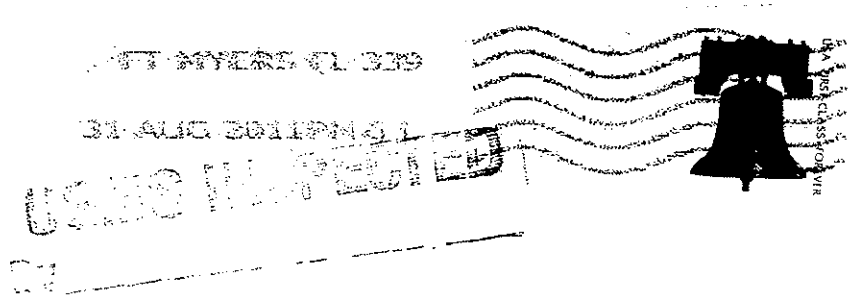
Shawn Hamlett 016227
plaintiff,
Charlotte Corr. Inst.
33123 Oil Well Road
Punta Gorda, Florida 33955

I certify under the penalties of perjury that a original copy of Notice to the court of the Defendants Proper Name, Title, description and address has been handed and mailed through the correctional officers at Charlotte C.I. via U.S. Mail and that also a Notice of Change of address has also been included within this envelope. on Aug. 30, 2011. This envelope has been addressed to the clerk of Court of the United States District Court, Southern District of Florida, 400 North Miami Avenue Miami, Florida 33128 8th Floor

Respectfully

Case 1:11-cv-22496-PAS Document 10 Entered on FLSD Docket 09/06/2011 Page 5 of 5

Shawn Hamlett 101227
Charlotte Correctional Institution
33123 Oil Well Road
Punta Gorda, Florida 33955



Legal Mail

TO: United States District Court
Southern District Of Florida
Office of the Clerk of Court 8th Floor
400 North Miami Avenue
Miami, Florida 33128-7716

Legal Mail

33128+1801

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-22496-CIV-SEITZ
MAGISTRATE JUDGE P.A. WHITE

SHAWN HAMLETT,

Plaintiff,

v.

SGT. MOZINGO, et al.,

Defendants.

REPORT OF MAGISTRATE JUDGE

I. Introduction

Shawn Hamlett, confined at the Apalachee Correctional Institution, filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983, alleging use of excessive force at the South Florida Reception Center. The plaintiff is proceeding in forma pauperis, and seeks monetary damages.

This Cause is before the Court upon an initial screening of the complaint (DE#1), pursuant to 28 U.S.C. §1915.

II. Analysis

A. Applicable Law for Screening

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

* * *

> (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -
>
> * * *
>
> (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 from a defendant who is immune from such relief.

This is a civil rights action Pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. 1983; Polk County v Dodson, 454 U.S.312 (1981); Whitehorn v Harrelson, 758 F. 2d 1416, 1419 (11 Cir. 1985. The standard for determining whether a complaint states a claim upon which relief may be granted is the same whether under 28 U.S.C. §1915(e)(2)(B) or Fed.R.Civ.P. 12(b)(6) or (c). See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319,

325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with

alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.[1]

B. Factual Analysis

The plaintiff names South Florida Corrections Officers Mozingo, Williams, Johnson, Johnson, and Marshall, along with Warden Harris and Edwin Buss, Secretary of the Department of Corrections as defendants. [2] He alleges that on January 27, 2011, he declared a psychological emergency at the South Florida Reception Center to Officer Marshall. He was taken to Officer Williams, who handcuffed him and placed him in a holding cell. Sgt. Monzingo asked Williams for his medical file, and accused him of faking his condition. Mozingo entered his cell with Williams, Marshall and Officers Johnson (Black male)and Johnson (Black female) and about six other officers. Monzingo began striking him in the face with his fist, joined in by the other officers, who stomped him with their boots. They placed him in leg shackles and left him on the floor in pain.

He further alleges that the officers denied his requests for medical treatment for his resulting physical injuries, and psychiatric assistance. He then was thrown into a bus and taken to Central Florida Reception Center. He claims that upon arrival Officer Mozingo continued to physically abuse him. He suffered a concussion, and claims he was left with injuries, recurrent

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[1] The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

[2]. Buss has since been replaced as Secretary.

dizziness, loss of memory and headaches resulting from the concussion. He further contends he was diagnosed with post traumatic stress disorder and depression resulting from the physical abuse[3].

He claims Warden Harris and Secretary Buss were well aware of the incident, but failed to provide him with medical treatment.

C. Sufficiency of the complaint

The plaintiff's claims against Warden Harris and Buss must fail. They are clearly named in their supervisory capacity. Such liability cannot result merely from an improper or even unconstitutional act of their employees under a theory of respondeat superior. If a plaintiff sues a supervisor, there must be proof that the alleged injuries resulted from either direct action by the supervisors or an official custom, policy, or practice. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); Mandel v. Doe, 888 F.2d 782 (11 Cir. 1989). The plaintiff bears the burden of establishing a causal link between a government policy or custom and the injury which is alleged. Byrd v. Clark, 783 F.3d 1002, 1008 (11 Cir. 1986)(citing Monell, supra). The plaintiff's conclusory statement that these defendants were well aware of the incident is insufficient to establish a claim. Twombly, supra; See: Ashcroft v Iqbal (heightened pleading standard for supervisory liability). These defendants must be dismissed.

Use of excessive force

[3]. If the plaintiff was a pretrial detainee at the time of the events alleged, his claims must be analyzed under the Due Process Clause of the Fourteenth Amendment rather than the Cruel and Unusual Punishment Eighth Amendment standard. Bell, 441 U.S. at 535; Hamm, 774 F.2d at 1571-74.

An allegation of an unjustified, brutal use of force against an inmate by a guard states a claim under §1983. Perry v. Thompson, 786 F.2d 1093 (11 Cir. 1986). It is not necessary for a prison or jail official to actually participate in the use of excessive force in order to be held liable under §1983, he need only be present at the scene and fail to take steps to protect a victim from a fellow officer's use of excessive force. Fundiller v. City of Cooper City, 777 F.2d 1436, 1441-42 (11 Cir. 1985) ("an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance").

The plaintiff has stated a claim at this early stage for use of excessive force by Officers Mozingo, Williams, Marshall, Johnson and Johnson.

The plaintiff's complaint provides minimal information to identify the defendants. On September 2, 2011, the plaintiff filed a notice to the Court to provide additional identifying information. (DE#10).

III. Recommendation

1. It is therefore recommended that the complaint be dismissed against defendants Warden Harris and Edwin Buss, for failure to state a claim pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

2. The case shall proceed against Officers Mozingo, Williams, Marshall, Johnson and Johnson for use of excessive force and refusal of medical treatment.

Objections to this Report may be filed with the United States District Judge within fourteen days following receipt.

Dated at Miami, Florida, this 21st day of September, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Shawn Hamlett, Pro Se
#C01227
Charlotte CI
Address of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 11-22496-CIV-SEITZ
MAGISTRATE JUDGE P.A. WHITE

SHAWN HAMLETT,

Plaintiff,

v.

SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON, OFFICER E.J. JOHNSON, WARDEN DAVID HARRIS, SECRETARY OF THE DEPT. OF CORRECTIONS FOR FLORIDA, EDWIN G. BUSS,

Defendants.
_____/

DEFENDANTS SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON AND OFFICER E.J. JOHNSONS' MOTION FOR ENLARGEMENT OF TIME TO FILE A RESPONSE

COMES NOW, Defendants, SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON AND OFFICER E.J. JOHNSON, (collectively referred to as "DEFENDANTS") by and through undersigned counsel and pursuant to Fla.R.Civ.P.1.090(b), and hereby moves this Court for an enlargement of time of twenty (20) days, up to and including November 8, 2011, in which to file a response to Plaintiff's Complaint in the instant case. In support of this motion, the Defendant states as follows:

1. On September 28, 2011, Plaintiff served his Complaint on the Defendants.

2. Defendants' response is due on Wednesday, October 19, 2011.

3. Due to the various administrative levels and different agencies the Complaint had to go through before being assigned to an individual attorney, the undersigned attorney was assigned to represent the Defendants on Friday October 14, 2011.

5. As a result, additional time is necessary in order for the undersigned to contact his clients, request and receive the relevant records, adequately research the issues raised in the Complaint, and to prepare a competent response.

6. This motion is made in good faith and not for purposes of delay, and the Plaintiff will not be prejudiced by this requested enlargement in any way.

7. In the filing of this Motion for Extension of time, the Defendant hereby reserves all defenses and objections and in no way waives the right to file any and all appropriate responses to Plaintiff's complaint, including a Motion to Dismiss.

WHEREFORE, Defendants respectfully request that this Court grant this Motion for Enlargement of Time for twenty (20) days, up to and including November 8, 2011, to serve a response on the Plaintiff.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/S/ John J. Bajger
JOHN J. BAJGER
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of October, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/S/ John J. Bajger
John J. Bajger
Assistant Attorney General

SERVICE LIST

CASE NO.: 11-22496-CIV-SEITZ
MAGISTRATE JUDGE P.A. WHITE

Shawn Hamlett, DC#C01227
Charlotte Correctional Institution
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Punta Gorda, FL 33955
Pro Se
[Via US Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 11-22496-CIV-SEITZ
MAGISTRATE JUDGE P.A. WHITE

SHAWN HAMLETT,

Plaintiff,

v.

SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON, OFFICER E.J. JOHNSON, WARDEN DAVID HARRIS, SECRETARY OF THE DEPT. OF CORRECTIONS FOR FLORIDA, EDWIN G. BUSS,

Defendants.
_____/

ORDER GRANTING DEFENDANTS SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON AND OFFICER E.J. JOHNSONS' MOTION FOR ENLARGEMENT OF TIME TO FILE A RESPONSE TO PLAINTIFF'S COMPLAINT

THIS MATTER comes before the Court upon Defendants SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON AND OFFICER E.J. JOHNSONS' Motion for Enlargement of Time to File a Response to Plaintiff's Complaint. This Court, having reviewed the Motion and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED that Defendants' Motion for Extension of Time is hereby **GRANTED**.

Defendants SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON AND OFFICER E.J. JOHNSON'S response to Plaintiff's Complaint is now due on or before November 8, 2011.

DONE AND ORDERED in Chambers at Miami, Florida on this _____ day of October, 2011.

PATRICK A. WHITE
United States Magistrate Judge

Copies furnished to:

John J. Bajger,A.A.G.
Shawn Hamlett

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-22496-CIV-SEITZ/WHITE

SHAWN HAMLETT,

Plaintiff,

v.

SGT. MOZINGO, *et al.*,

Defendants.
_____/

ORDER AFFIRMING MAGISTRATE REPORT

THIS MATTER is before the Court upon the Report of Magistrate Judge issued by the Honorable Patrick A. White, United States Magistrate Judge [DE-12]. In the Report, Magistrate Judge White recommends that Plaintiff's civil rights complaint, filed pursuant to 42 U.S.C. § 1983, proceed as to the claims for use of excessive force and refusal of medical treatment against Defendants Officers Mozingo, Williams, Marshall, Johnson, and Johnson and that the complaint be dismissed as to Defendants Warden Harris and Edwin Buss. Plaintiff has not filed any objections to the Magistrate Judge's Report. Having carefully reviewed, *de novo*, Magistrate Judge White's thorough Report, the objections, and the record, it is hereby

ORDERED that the above-mentioned Report of Magistrate Judge [DE-12] is AFFIRMED and ADOPTED:

(1) The Claims against Warden Harris and Edwin Buss are DISMISSED.

(2) The claims against Officers Mozingo, Williams, Marshall, Johnson, and Johnson for excessive force and refusal of medical treatment shall proceed.

DONE and ORDERED in Miami, Florida, this 25th day of October, 2011.

PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge White
All counsel of record/*Pro se party*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 11-22496-CIV-SEITZ
MAGISTRATE JUDGE P.A. WHITE

SHAWN HAMLETT,

Plaintiff,

v.

SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER WANDA JOHNSON, OFFICER E.J. JOHNSON, WARDEN DAVID HARRIS, SECRETARY OF THE DEPT. OF CORRECTIONS FOR FLORIDA, EDWIN G. BUSS,

Defendants.
_____/

SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER E.J. JOHNSON AND OFFICER WANDA JOHNSONS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

COMES NOW, Defendants SGT. MOZINGO, SGT. WILLIAMS, OFFICER MARSHALL, OFFICER E.J. JOHNSON, and OFFICER WANDA JOHNSON (hereinafter collectively referred to as Defendants), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 8(b) and (c) and hereby files this Answer and Affirmative Defenses to Plaintiff's Complaint and states:

STATEMENT OF CLAIM

Any and all allegations made in Section II of Plaintiff's Complaint, including allegations made with regard to Exhaustion of Administrative Remedies, are hereby denied in its entirety.

RELIEF

Defendant denies that Plaintiff is entitled to any relief based on the allegations in his complaint. Therefore, Section III is denied in its entirety.

Any and all allegations not specifically addressed above, including all "WHEREFORE" clauses and any and all requests for relief, are hereby denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants acted reasonably within the discretion of their position and the course and scope of their employment and did not violate any clearly established statutory or constitutional right of the Plaintiff with which a reasonable person would have known, and therefore is entitled to qualified immunity from suit.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. 1983.

THIRD AFFIRMATIVE DEFENSE

Defendants assert that any and all injuries or damages suffered by Plaintiff were caused in whole or in part by Plaintiff's negligence or wrongful acts and/or misconduct.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish as a subjective matter that the Defendants acted with a sufficiently culpable state of mind as required for liability under 42 U.S.C. 1983.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred pursuant to the Prison Litigation Reform Act of 1995 (PLRA) based on failure to exhaust administrative remedies.

SIXTH AFFIRMATIVE DEFENSE

Defendants assert that any force applied to the Plaintiff was applied in a good-faith effort to maintain or restore discipline, and therefore there can be no liability under 42 U.S.C. '1983.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to 42 U.S.C. § 1997(e)(3), Plaintiff is not entitled to damages for mental or emotional injury suffered because he is unable to show that he suffered a physical injury.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish an objective showing of deprivation or injury that is sufficiently serious to constitute a denial of the minimal civilized measure of life's necessities; and Plaintiff cannot make a subjective showing that Defendant had a sufficiently culpable state of mind. Therefore, Defendant is not liable for damages pursuant to Plaintiff's claim of excessive force

Defendant reserves the right to amend and supplement these affirmative defenses adding such additional affirmative defenses as are appropriate upon further discovery being conducted in this case.

WHEREFORE, having fully answered the Complaint, Defendants deny that the Plaintiff is entitled to the relief sought, or any relief whatsoever, and further demands trial by jury of all issues so triable as of right.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/S/ John J. Bajger
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of November, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/S/ John J. Bajger
John J. Bajger
Assistant Attorney General

SERVICE LIST

CASE NO.: 11-22496-CIV-SEITZ
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