CASREF,PAW

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:11-cv-21118-FAM

Johnson v. Razdan
Assigned to: Chief Judge Federico A. Moreno
Referred to: Magistrate Judge Patrick A. White
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 03/31/2011
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Elbert Johnson
Prisoner ID: DC# 013118

represented by **Elbert Johnson**
DC# 013118
Dade Correctional Institution
19000 S.W. 377 Street
Florida City, FL 33034
PRO SE

V.

Defendant

Sanjay Razdan

represented by **Robert Emerito Paradela**
Wicker Smith Tutan O'Hara McCoy Graham & Ford
515 E Las Olas Boulevard
Suite 1400 Suntrust Bank
Fort Lauderdale, FL 33301
954-467-6405
Fax: 760-9353
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Patrick K Dahl
Wicker, Smith, O'Hara, McCoy & Ford, P.A.
SunTrust Center
515 E. Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
9548474800
Fax: 9547609353
Email: pdahl@wickersmith.com
ATTORNEY TO BE NOTICED

Defendant

J. Dwares
TERMINATED: 09/13/2011

Defendant

Ron Ruell
TERMINATED: 09/13/2011

Date Filed	#	Docket Text
03/31/2011	1	COMPLAINT Under the Civil Rights Act against Sanjay Razdan. Filing fee $ 350.00. IFP Filed, filed by Elbert Johnson. (Attachments: # 1 Exhibits)(jua) (Entered: 03/31/2011)
03/31/2011	2	Judge Assignment to Chief Judge Federico A. Moreno (jua) (Entered: 03/31/2011)
03/31/2011	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. (jua) (Entered: 03/31/2011)
03/31/2011	4	MOTION for Leave to Proceed in forma pauperis by Elbert Johnson. (jua) (Entered: 03/31/2011)
05/03/2011	5	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 5/3/2011. (tw) (Entered: 05/03/2011)
05/03/2011	6	ORDER denying without prejudice 4 Motion for Leave to Proceed in forma pauperis and requiring more detailed financial affidavit. Signed by Magistrate Judge Patrick A. White on 5/3/2011. (Attachments: # 1 Affidavit IFP) (tw) (Entered: 05/03/2011)
05/12/2011	7	MOTION for Leave to Proceed in forma pauperis by Elbert Johnson. (drz) (Entered: 05/12/2011)
06/02/2011	8	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF $350.00 and Ggranting 7 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 6/1/2011. (tw) (Entered: 06/02/2011)
06/13/2011	9	MOTION for Leave to Amend Complaint by Elbert Johnson. (drz) (Entered: 06/13/2011)
07/27/2011	10	ORDER granting 9 Motion for Leave to File the amended complaint.. Signed by Magistrate Judge Patrick A. White on 7/27/2011. (cz) (Entered: 07/27/2011)
07/28/2011	11	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL.The United States Marshal shall serve a copy of the complaint and appropriate summons upon: Razdan Sanjay, Urologist, Kendall Regional Medical Center, 11750 S.W. 40th Street, Miami, FL 33175. Signed by Magistrate Judge Patrick A. White on 7/27/2011. (tw) (Entered: 07/28/2011)

08/02/2011	12	NOTICE of Inquiry by Elbert Johnson (drz) (Entered: 08/02/2011)
08/03/2011	13	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Elbert Johnson. Recommending 1. The claim of lack of adequate medical treatment shall proceed against Defendant Razdan. 2. The claims of denial of adequate medical treatment against Defendants Dware and Ruell shall be dismissed pursuant to 28 U.S.C. 1915(e)(2)(B)(ii) for failure to state a claim. 3. The operative complaint is the amended complaint (DE#9). Objections to R&R due by 8/22/2011. Signed by Magistrate Judge Patrick A. White on 8/3/2011. (tw) (Entered: 08/03/2011)
08/05/2011	14	Summons Issued as to Sanjay Razdan. (br) (Entered: 08/05/2011)
08/05/2011	15	MOTION to Appoint Counsel by Elbert Johnson. Responses due by 8/22/2011 (ls) (Entered: 08/08/2011)
08/09/2011	16	ORDER denying 15 Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 8/9/2011. (cz) (Entered: 08/09/2011)
08/12/2011	17	SUMMONS (Affidavit) Returned Executed on 1 Complaint by Elbert Johnson. Razdan Zanjay, Urologist-Kendall Regional Medical Center served on 8/10/2011, answer due 8/31/2011. (drz) (Entered: 08/12/2011)
08/22/2011	18	ORDER ADOPTING 13 REPORT AND RECOMMENDATIONS. Signed by Chief Judge Federico A. Moreno on 8/22/11. (dge) (Entered: 08/22/2011)
08/24/2011	19	NOTICE of Attorney Appearance by Patrick K Dahl on behalf of Sanjay Razdan (Dahl, Patrick) (Entered: 08/24/2011)
08/31/2011	20	Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs* by Sanjay Razdan. Responses due by 9/19/2011 (Dahl, Patrick) (Entered: 08/31/2011)
08/31/2011	21	MEMORANDUM of Law re 20 Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs*Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs* by Sanjay Razdan. (Dahl, Patrick) (Entered: 08/31/2011)
09/09/2011	22	Defendant's MOTION for Protective Order by Sanjay Razdan. (Attachments: # 1 Text of Proposed Order)(Dahl, Patrick) (Entered: 09/09/2011)
09/12/2011	23	ORDER granting 22 Motion for HIPAA Qualified Protective Order. This Order encompasses the proposed Order of the defendant.. Signed by Magistrate Judge Patrick A. White on 9/12/2011. (cz) (Entered: 09/12/2011)
09/20/2011	24	Plaintiff RESPONSE to Defendant's Motion to Dismiss and Memorandum in support of Motion to Dismiss re 20 Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or,*

		*Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs*Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs* filed by Elbert Johnson. Replies due by 9/30/2011. (drz) (Entered: 09/20/2011)
09/21/2011	25	REPORT AND RECOMMENDATIONS on 42 USC 1983 case. Denying 20 Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs*Defendant's MOTION TO DISMISS 9 MOTION for Leave to File FOR FAILURE TO STATE A CLAIM *Or, Alternatively, Rule 10(b) Motion To Require Plaintiff To File Amended Complaint Containing Numbered Paragraphs* filed by Sanjay Razdan 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)
09/22/2011	26	Defendant's MOTION for Discovery *to Depose Plaintiff in Prison* by Sanjay Razdan. Responses due by 10/11/2011 (Attachments: # 1 Text of Proposed Order Proposed Order)(Dahl, Patrick) (Entered: 09/22/2011)
09/23/2011	27	ORDER granting 26 Motion to take deposition of plaintiff Elbert Johnson. This is an unrepresented plaintiff and the defendants shall govern themselves accordingly.. Signed by Magistrate Judge Patrick A. White on 9/23/2011. (cz) (Entered: 09/23/2011)
10/28/2011	28	ORDER ADOPTING 25 Report and Recommendations re 20 Motion to Dismiss. The Motion to Dismiss is DENIED. Signed by Chief Judge Federico A. Moreno on 10/27/11. (dge) (Entered: 10/28/2011)
11/03/2011	29	SCHEDULING ORDER: Amended Pleadings due by 3/6/2012. Discovery due by 2/21/2012. Joinder of Parties due by 3/6/2012. Motions due by 3/27/2012.. Signed by Magistrate Judge Patrick A. White on 11/3/2011. (tw) (Entered: 11/03/2011)
11/07/2011	30	ANSWER and Affirmative Defenses to Complaint with Jury Demand by Sanjay Razdan.(Dahl, Patrick) (Entered: 11/07/2011)
01/06/2012	31	MOTION Requesting Order to Compel *Production of Documents* by Elbert Johnson. Responses due by 1/23/2012 (asl) (Entered: 01/09/2012)
01/11/2012	32	ORDER denying 31 Motion to Compel, if the plaintiff is attempting to obtain records from a non party he must arrange for subpoenas and pay for them.. Signed by Magistrate Judge Patrick A. White on 1/11/2012. (cz) (Entered: 01/11/2012)
02/03/2012	33	First MOTION for Extension of Time to Complete Discovery by Sanjay Razdan. (Attachments: # 1 Text of Proposed Order Proposed Order)(Dahl, Patrick) (Entered: 02/03/2012)
02/03/2012	34	NOTICE of Service Answer to Interrogatories by Elbert Johnson (jua) (Entered: 02/06/2012)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11CV21118 FAM

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

United States District

Court Southern District of Florida

RECEIVED
JUN 06 2011
By

FILED by PRG D.C.
JUN 13 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

Elbert Johnson
Plaintiff,

vs

Radzan, Sanjay
Defendant.

Case No. 1:11-CV-21118-FAM #6

Motion for Leave to
Amend Complaint

Plaintiff, Elbert Johnson, by and through undersigned counsel, Moves the Court for leave in the above-entitled action pursuant to Fed. R. Civ. P. Rule 15. (a) (c) on the ground that the proposed amendment and the evidence offered under it are necessary to a complete determination of the issues in this action and the rights of the parties. A copy of the proposed amended complaint is attached.

Respectfully

s/ Elbert Johnson

Dated 6-7-11

Elbert Johnson #013118
Dade Correctional Inst.
19000 S.W. 377 Street
Florida City, Florida 33034

RECEIVED
JUN 06 2011
By

(Rev. 09/2007) Complaint Under The Civil Rights Act, 42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number: 1:11-CV-21118-FAM #6

Elbert T Johnson
(Enter the full name of the plaintiff in this action)

v.

Razdan, Sanjay
DWARES, I.
Ron Ruell

(Above, enter the full name of the defendant(s) in this action)

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

Instructions for Filing:

This packet includes four copies of the complaint form and two copies of the Application to Proceed without Prepayment of Fees and Affidavit. To start an action you must file an original and one copy of your complaint for the court and one copy for each defendant you name. For example, if you name two defendants, you must file the original and three copies of the complaint (a total of four) with the court. You should also keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original.

Your complaint must be legibly handwritten or typewritten. Please do not use pencil to complete these forms. The plaintiff must sign and swear to the complaint. If you need additional space to answer a question, use an additional blank page.

Your complaint can be brought in this court only if one or more of the named defendants is located within this district. Further, it is necessary for you to file a separate complaint for each claim that you have unless they are all related to the same incident or issue.

060/F7

ATTACHMENT / EXHIBIT 1

There is a filing fee of $350.00 for this complaint to be filed. If you are unable to pay the filing fee and service costs for this action, you may petition the court to proceed in forma pauperis.

Two blank Applications to Proceed without Prepayment of Fees and Affidavit for this purpose are included in this packet. Both should be completed and filed with your complaint.

You will note that you are required to give facts. THIS COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS.

When these forms are completed, mail the original and the copies to the Clerk's Office of the United States District Court, Southern District of Florida, 301 North Miami Avenue, Miami, Florida 33128-7788.

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: Elbert T Johnson

Inmate #: 013118

Address: Dade Correctional Institution
19000 S.W. 377 Street, Florida City, FL 33034

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: Razdan, Sanjay

is employed as Urology

at Kendall Regional Med. Center, 11750 S.W. 40th St. Miami, FL 33175

C. Additional Defendants: DWarres, T. NP at Dade Correctional Institution, 19000 S.W. 377 Street, Florida City, FL 33034

Ron Rued Nurse at Dade Correctional Institution, 19000 S.W. 377 Street Florida City, FL 33034

II. Statement of Claim

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

Do not give any legal arguments or cite any 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.

on and about May 2009, I was on call-out to see Doctor Poveda. He said, "Elbert, I've been going through your Medical record and you are in good health, but I notice that your prostate number is high." I said, "I just taking a prostate biopsy a few months ago before I was transferred here and the number that you are referring to were the same as they are now, and the result came back negative as you can also notice in my Medical record." Then He said, "Well, I still like for you to see the urologyy." I signed a refusal.

on and about June 2009, I was call, put into a Van with two other inmates and taking to Jackson

South Medical Center to see Doctor Razdan office. Doctor Razdan assistance came into the inmates waiting room and said, "Elbert, if you will fill out these papers, we will go ahead with the biopsy."

Continue on the next page.

III. Relief

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

This is an individual capacity action against Doctor Razdan, Sanjay. (1) Plaintiff request monetray and punitive damage for medical indifference causing life time male disfunction of my penis to erect proper.

This is an individual capacity action against Dwaves, J. (1) Plaintiff request monetray for punitive damage for causing me excessive pains and suffering.

This is an individual capacity action against Ron Ruell. (1) Plaintiff request monetary for punitive damage for causing me excessive pains and suffering.

Do to medical malpractice.

VII. Jury Demand

Do you demand a jury trial? [✓] Yes [ ] No

I Said, "MS I do not know what you are talking about, because, I am not taking a biopsy, Matter of fact, I really do not know why i am here, because, I've signed a refusal." She said, "O.K." and walked out.

on and about July 2009, I was on call-out to see Aguilar and He Said, "Elbert, I strongly think that you should take the biopsy." I Said, "Look, its Nothing Wrong with Me. I do not have cancer, so, Why Should I take it." I signed another refusal.

IN Aug. 2009, I was call and put into a van With three inmates and taking to Kendal Medical Center to Doctor Razdan New office. Doctor Razdan came into the inmates Waiting room and Said, "Elbert, are you ready today to take the biopsy?." I Said, "No, and I do not know Why I am here. I've Signed a refusal." He Said, "O.K."

IN Sept. 2009 I was on call-out to see Dr Reyes and He Said, "Elbert, I notice in your record that you've taking a prostate biopsy and it came back Negative, but, it Will not Hurt to take it again." I Said, "you are right. I've taking one and I am not taking another one." I Signed another refusal.

on and about Nov. 2009, I was on call-out, put into a van and taking to Kendall Medical Center to Doctor Razdan office. Doctor Razdan came into the inmates Waiting room and Said, "Elbert, are you ready to take the biopsy?." I Said, "No." then He Said, "Look at you, cancer is eating you up. Do you want to die. I do not care. you have cost me to lose ten-thousand dollars by Keep Coming Here." I Said, "I've not cost you to lose any thing. I've been Signing refusal and you Must be

Keep sending for me." He looked toward officer Polk and officer Terry and said in a real loud voice "do not bring him here again! I do not want to see him". And rushed out of the room.

on and about Jan. 2010. I was on call-out again to see Doctor Poveda and I was persuaded to ~~the~~ Ke the biopsy.

on and about March 2010, I was taking to Kendall Medical Center to Doctor Razdan office. He came into the waiting room and said, "Elbert, are you ready this time?" With a smile on His face. I said, "yes, i am going to go ahead and take it." He then did the paper work and said "I will see you in my office in about a Month or so o.k."

on and about May 2010, I was taking to Doctor Razdan office at Kendall Medical Center. Doctor Razdan assistant came into the waiting room and said, "Elbert, We are ready for you". She taking officer Polk and I into a office, which, i notice that I did not see any kind of Machines in there, so, I asked Her, "are you going to give me something to clean me out?" She said, "no, its not Necessary." In about five Minutes Doctor Razdan came in, sit down and said "pass me." then I looked back and She passed Him a long tool with little blades on the end of it. He was doing the biopsy Manual. Doctor Razdan start digging into my prostate like He did not care Whether or not that He was hurting me. I was in unbearable pains. I was groaning and Moaning. "He was hurting me so bad! And He was just saying, O-you've a large prostate, don't push me out over

and over." When He finished, He just got up and walked out. I was still hurting. I asked officer Polk to take me to the bathroom and I drop my pants and I was bleeding pretty bad from the biopsy procedure. When We arrived back at the Institution. I had to be check out through the infirmary and as the Nurse was taking my blood pressure, She saw blood on my pants and She said, "What is that?". I said, "I just taking a prostate biopsy and its just blood from it." She said, "oh no, I am going to keep you over night to see the doctor." I then said, "can I have some antibiotic". She said, "the doctor will give you some in the morning." When morning came. I was release Without seeing a doctor. Later that day I felt something running down my leg. I drop my pants and my boxer was bloody and my right testic Was swollen about the size of a golf ball and paining real bad! I went to Medical and Was told that the urology had a follow up on me and its Nothing that they can do for me. I then filed a Emergency Grievance to the Warden, Which, Was approved 13 days Latered, Mean While I Was going through Severe pains. I Went to a Maintenance Supervisor Name is Maldonado and asked Him can He get me into Medical and get me some Help. He taken Me and declared a Medical Emergency and He was told that I can not declare a Medical Emergency. Maldonado got alittle up set and Went to Security, and was told that they can not stop me from declaring a Medical Emergency. Security told me

to sit, because some body is going to see me. After awhile a Nurse came and said, "Whats your problem." I said, "I am bleeding and my testic is swollen and I am in pains." She gave me a small container and said, "bring Me some urine." I went into the bathroom and grabbed the sink and went through pains to get some urine out. I took Her What I had. She left and came back With two pills and said, "this is all that I can do for you. The urology has a follow upon you. I am sorry." That Night, I tried to urinate and i had to grabbed the sink and cry out Oh GOD Help me! I was in unbearable pains and I Needed Help. Morning came. I tried to sign up for sick-call and was told that the list was full. I was in pains. A female Sgt. Mrs Wilson said, "Johnson how are you doing." I said, "Sgt. I am in pain and the officer said that the sick-call list is full. Sgt. Wilson Call the officer and said, "put Johnson on that list." then the officer added my Name on the list. When I did get a Chance to be seen by RON ESPINAL Who does sick call. He said, "Elbert What is your problem?". I said, "I am in pains and bleeding, please give me something for pains, Man that urology has messed me up." He said, "I believe that you are in pains and maybe the urology was a little rough doing the biopsy, but was here yesterday and they did not do any thing for you, its Nothing that I can do." I said, "Please! Give me Something!." He said, "the only thing that I've to give you some IBUPROFEN".

I took them and left. That night i was going through unbearable pains trying to urinate. I only could call-out to GOD to help Me! Morning came and I had to get some help. I Went to another Maintenance Supervisor Name Pedro. He took me back to Medical Sick Call and Said, "Elbert is in severe pains What about seeing him." ESPINA Said, "He is no better than anyone else. He is going to have to Wait out there like the rest." Pedro Said, "Well, Elbert, I guess that you have to Wait." In about an hour. I Was Call. ESPINA Said, "Elbert What going on." I Said, "Man, I Need Help, i am bleeding and in severe pains When I try to urinate My testis is SWOllen and Hurting." He Said, "Let Me See." I drop my pants. He looked and Said, "Oh no, this is Not Suppose to be like that! go out side Let me get the doctor." He rushed out and came back With Dwayes and Dwayes Said, "drop your pants and Let Me See." I drop my pants and Dwayes Said Jess drop all the red tape and put him on 500 cc penicillin Starting right Now for three days then put him on antibitil twice a day for ten days." After the penicillin the bleeding Stop, and the antibiotic Was Seem to Help or ease the pains in my testis. I Was on antibiotic for Seven days and I Was told that that Was my last day. In three days my testis Started paining and When I try to urinate it Hurted Me So bad. That night I thought that I Was going to die! I just Prayed and ask GOD to Help Me. I could not urinate. I could only Cry out for Help Please! Somebody Help me! GOD Help Me! I Made it til Morning and a inmate ran to my Cell and Said, "Pop Whats Wrong!." I could only Say

help me please! He ran and got another Wheel Chair put me into it and called for the officer over the dorm to open the door and call Medical and tell them we are coming. When We got to Medical. I was put on table and the Nurses were holding Me down. No one knew What to do. I was just hollowing calling out for something for pains! Please! Help me oh GOD help me! They just let Me Suffered. EVery one Was just Standing there looking. A Nurse Name Ms Morales Was holding my Head. I asked Her Why they Will not give Me Something for pains. She said, "I've been to them four times and asked them to give you something and I am going to ask them again." In about three hours or so. A Nurse Name Ron Ruedl decided to put a tube in to my penis, I was hollowing and crying out. GOD help me! Ron poke and push for about a Hour and thirty Minutes and could not get the tube in to my penis then He Shot two tubes of Water in to my penis. I just knew that I Was going to die. I can not describe the pains that I was going through. Ron could not get the tube in to my penis only blood came out. Then DWaves Start poking and poking trying to put the tube in to my penis. DWaves poke for about an Hour or so, finaL they decide to give Me Something for pains, I was admitted to the infirmary. The Next day. I was taking to Kendall Regional Medical Center. After being admitted to a bed a R.N. by the Name Arthur looked at the urine bag that I had on me, While the only thing was in it was blood, He said "Something is wrong. Let Me take a look at that, then

He said, "Who done this?." I said, "they done it at the institution." He said, "I hate to say this, but they did not know what they was doing, the number is not right." He rejust the number and pushed down and the urine start flowing out. Three and one half 2 liters come out of me. Arthur and the rest of the R.N. that was there was astonish and said, Johnson, you are a lucky man. I do not know how that you made it. About an hour or so, a Doctor came in with a ultra sound Machine and went over my lower body and left. The next Morning Doctor Razdan came and said, "Elbert, your liver has been damage. I will write a prescription for that, by the way, you biopsy test result came back negative." and He walked out. I was there in the Hospital for three days and was transferred back to the institution. I had a urine bag, which, i wore for twenty-two days and it was taken off at the institution Medical Nurse. Three days after the bag was remove. My urine stop again and I was rushed back to Medical. I was going through unbearable pains No one in the infirmary would give me any thing for pains until about two or three Hours later. I was final put into a Van and taking back to Kendall Medical Center. I was in unbearable pains. My testis was swollen and paining so bad! I could urinate a little I did not have any control over it. It just run a little and stop. I just knew that I was going to die! My prostate had swollen so severely until no one at the Hospital could another urine tube into my bladder. The next

Morning Doctor RaZdan came and tried to put a tube into my bladder and I felt liquid running over my body. Doctor RaZdan had cut a hole into my bladder, put the tube into it and sewed it up and said, "Clean him up." and walked out

In about thirty Minutes two Nurses come with a form and said, "Johnson, Sign this." I read it and refused to sign it.
After I was there three days. I was given a Cat-Scan and taking back to my room. In about an Hour, two Specialist come into my room and said, "Elbert both of your Kidneys have been damage and also your Liver, but we are going to fix you up O.K." I said, "O.K. Doc." In three More days. I was taking to a Specialist to do Ultra-Sound test of my right testis and as He was testing. He was looking as something was badly wrong. He just kept going over and over the same spot. I could tell that Something was Wrong, so, I said, "Doc. Whats going on? Whats Wrong?" He said, "Johnson, it is bad." I was taking back to my room. In about an Hour those two Specialist who said that they was going to fix me up come to my room With a Ultra-Sound Machine and tested my right testis again over and over and they was looking at each other and from their body language and Hearing bits and pieces of their Conversation, I Knew Something was Wrong and Doctor RaZdan had something to do With it. They left and I Never heard or saw either again.

on my ninth day. Doctor RaZdan Showed up for the first time With His head down looking as if He knew that He had did Some thing Wrong during the procedure of the prostate biopsy to cause Me my life. He walk up to my bed and said, "Elbert, in a sad Voice, how are you doing?." I did not say a Word. I just looked at Him, because, I knew that he had done Some thing Wrong to me. Then He said, "Elbert, I am going to have to do Surgency on you." I said, "What!." He said, "I am not going to cut you, it will be laser Surgency and it will not hurt you. I want to go up in there and trem around the edge of your prostate so that you can pee out of your penis. I am going to send you back to the institution and I will see you in my office in about two Weeks O.K."

Around Sept. 2010. I Was taking to Kendall Medical Center to have Surgency. After the Surgency, I had to Wave a urine bag for two Weeks and it Was remove. I can not urinate normal and my right testis is still Swollen With knots on it and my penis Will not erect proper. Its obious that during the prostate biopsy Something Was done Wrong to cause my testis to Swelled as it did and cause my urine to stop Which, almost took my life and has damage my life forever. My health Was good until Doctor performed the prostate biopsy on me and My Medical record Will reveal that I did not have any kind of health problem.

Signed this 7 day of June, 2011

Johnson, Elbert
(Signature of Plaintiff)

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

Executed on: _____

Johnson, Elbert
(Signature of Plaintiff)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-21118-CIV-MORENO
MAGISTRATE P. A. WHITE

ELBERT JOHNSON,

Plaintiff,

v.

SANJAY RAZDAN, et al,

Defendants.

REPORT OF
MAGISTRATE JUDGE

I. Introduction

The pro-se plaintiff, Elbert Johnson, filed a civil rights complaint pursuant to 42 U.S.C. §1983,(De#1) and an amended complaint (DE#9), alleging denial of adequate medical treatment. The plaintiff is permitted to proceed in forma pauperis.

This Cause is before the Court upon an initial screening of the complaint and amended complaint 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]

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

B. Factual Allegations

In the initial complaint the plaintiff names as the sole defendant Sanjay Razdan, a urologist at Kendal Regional Medical Center. The plaintiff claims that Razdan's poor surgical techniques and deliberate indifference to his medical condition resulted in permanent damage to his organs.

On June 13, 2011, the plaintiff filed an amended complaint, raising the same claims as raised in the initial complaint, and adding Nurse Practitioner (NP) Dwares and Nurse Ruell, employed by Dade Correctional Institution, as defendants (DE#9). As this complaint contains additional defendants, this will be the operative complaint for screening purposes.

The plaintiff contends that on or about May of 2009, Dr. Poveda sent him for a prostate biopsy, stating that his number was high. He told Poveda that he had a biopsy a few months ago, which was negative and signed a refusal. Sometime in June of 2009, he was taken with other inmates to Jackson South Medical Center to see Dr. Razdan, a urologist, and he again signed a refusal for a biopsy. He states that he signed multiple refusals in July, August September and November of 2009.

In January of 2010, Dr. Poveda persuaded him to take a biopsy. He states that Razdan performed the biopsy manually. He was bleeding and in unbearable pain. Following the procedure, he was bloody and his right testicle was swollen. He was told there was nothing they could do for him. He declared a medical emergency, and was given pills, but remained in severe pain. He states he was seen in sick call and was told him there was nothing he could receive except Ibuprofin. Nurse Dwares, upon seeing how swollen he was,

prescribed 500 cc of penicillin and put him on an antibiotic for ten days. The bleeding stopped but he could not urinate. Nurse Ruell attempted to catheterize him. He said that he had requested pain medication for the plaintiff, and would ask again. The catheter was filled with blood, and he was admitted to Kendall Regional Medical Center. He was given an ultra sound and it was determined he had liver damage. He had to wear a colostomy and was rushed back to the medical center, as he could not urinate normally. He was in severe pain and swollen. He was told both of his kidneys had been damaged, as well as his liver. In September of 2010, Dr. Razdan performed a second surgery so he could urinate. He contends he still cannot urinate normally, his right testicle is swollen and he cannot get an erection. His biopsy proved to be normal. He seeks monetary damages.

Denial of Medical Treatment

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to

that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

A serious medical need is considered "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." Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11 Cir. 1994) (quotation marks and citation omitted). The subjective component requires the plaintiff to demonstrate that the prison officials acted wantonly, with deliberate indifference to the plaintiff's serious needs. See Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Id. at 835-36. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. See Estelle, 429 U.S. at 106. The inadvertent or negligent failure to provide adequate medical care "cannot be said to constitute 'an unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 105-06; Wilson, 501 U.S. at 298.

Further to rise to a level of an Eighth Amendment violation the plaintiff must demonstrate inhumane conditions of confinement. Farmer v Brennan, 511 U.S,. 825 (1994), These conditions must show a deprivation of a normal civilized measure of life's necessities, see Toney v Fuqua, 09 WL 1451645 (11 Cir. 2009) (denial of tooth paste and tooth brush for a period of time did not rise to an

Eighth Amendment violation).

Deliberate indifference can be established by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons. Farrow v West, 320 F.3d 1235, 1247 (11th Cir.2003) (finding jury question on issue of deliberate indifference because of unexplained fifteen-month delay in treatment). The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay. Harris v. Coweta County, 21 F.3d 388, 393-94 (11 Cir. 1994). A plaintiff may also establish deliberate indifference with evidence of treatment "so cursory as to amount to no treatment at all." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11 Cir. 1985). If prison officials delay or deny access to medical care or intentionally interfere with treatment once prescribed, they may violate the Eighth Amendment. Estelle, 429 U.S. at 104.

C. Analysis

The plaintiff alleges that Razdan ignored his pain during the biopsy procedure, and walked out of the room when it was finished, despite the fact that he was bleeding. He claims that after a long period of pain and bleeding, along with an inability to urinate he was returned to Kendall Medical Center. At that time Razdan told him there had been liver damage, gave him a prescription and sent him back to the institution. He was eventually rushed back to the hospital swollen, and in pain. He contends that Razdan cut a hole in his bladder, inserted a tube and said "clean him up" and walked out. He then learned his kidneys had been damaged. On the ninth day of his hospitalization, Dr. Razdan informed him he had to perform a second surgery. Following this surgery he was left with residual

damage, including a swollen testicle, and an inability to urinate properly. He essentially claims that Razdan caused his serious medical condition by being deliberately indifferent to his medical needs, and continued to be deliberately indifferent to his increasingly serious condition. At this preliminary stage, it cannot be determined whether Razdan's actions rise to a level of an Eighth Amendment violation. The case shall proceed against Razdan, and service will be ordered by separate order.

The plaintiff fails to state a claim against Dwares or Ruell. He states that when Dwares saw how swollen his testicle was he immediately put him on penicillin and antibiotics for ten days. He states that this helped for a while. Although the pain returned, there are no allegations that Dwares ignored his condition.

He describes Nurse Ruell's inability to catheterize him to aid him in urinating, and states that Dwares then unsuccessfully tried to aid him. They decided to give him something for the pain and admitted him into the infirmary. The next day he was taken to Kendall Regional Medical Center. These facts do not give rise to an Eighth Amendment violation of deliberate indifference by either defendant, and both Dwares and Ruell should be dismissed for failure to state a claim against them.

III. Conclusion

It is therefore recommended as follows:

1. The claim of lack of adequate medical treatment shall proceed against Defendant Razdan.

2. The claims of denial of adequate medical treatment against

Defendants Dware and Ruell shall be dismissed pursuant to 28 U.S.C. 1915(e)(2)(B)(ii) for failure to state a claim.

3. The operative complaint is the amended complaint (DE#9).

Objections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report.

Dated this 3rd day of August, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Elbert Johnson, Pro Se
#013118
Dade Correctional Institution
Address of Record

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 11-21118-CIV-MORENO

ELBERT JOHNSON,

Plaintiff,

vs.

SANJAY RAZDAN, *et al.*,

Defendant.
_____/

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THE MATTER was referred to the Honorable Patrick A. White, United States Magistrate Judge for a Report and Recommendation pursuant to Administrative Order 2003-19. The Magistrate Judge filed a Report and Recommendation **(D.E. No. 13)** on **August 3, 2011**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Patrick A. White's Report and Recommendation **(D.E. No. 13** is **AFFIRMED** and **ADOPTED**. Accordingly, it is

ADJUDGED that:

(1) The claim of lack of adequate medical treatment shall proceed against Defendant Razdan.

(2) The claims of denial of adequate medical treatment against Defendant J. Dwares and Defendant R. Ruell shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure

to state a claim.

(3) The operative complaint shall be the amended complaint **(D.E. No. 9)**.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of August, 2011.

FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:

United States Magistrate Judge Patrick A. White

Counsel of Record

Elbert Johnson
DC #013118
Dade Correctional Institute
19000 S.W. 377 Street
Florida City, FL 33034

69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON

Plaintiff,

vs.

SANJAY RAZDAN, M.D.

Defendant.
_____/

DR. RAZDAN'S RULE 12(b)(6) MOTION TO DISMISS OR, ALTERNATIVELY, RULE 10(b) MOTION TO REQUIRE PLAINTIFF TO FILE AMENDED COMPLAINT CONTAINING NUMBERED PARAGRAPHS

Defendant, Sanjay Razdan, M.D., ("Dr. Razdan") moves this Court pursuant to Rule 12(b)(6) and/or 28 U.S.C. §1915(e)(2)(B)(i), for the entry of an order dismissing the *pro se* complaint (DE 9) filed by the plaintiff, Elbert Johnson ("Johnson") in its entirety, and with prejudice, for its failure to state a claim. The grounds for this motion, which are set forth more fully in the accompanying "Memorandum In Support Of Defendant's Motion To Dismiss" ("Memorandum") which is incorporated herein, are as follows:

MOTION TO DISMISS

1. In May 2010, Johnson, an inmate at the Dade Correctional Institution, underwent a prostate biopsy allegedly performed by Dr. Razdan. (DE 9, p. 8.)[1]

2. Following that procedure, Johnson allegedly experienced complications. (DE 9, p. 15.)

[1] Johnson's' complaint is set out in narrative form. Page citations refer to the page as reflected on the FLSD Docket entry.

3. Johnson subsequently filed this action in which he contends that the medical care and treatment he received from Dr. Razdan somehow constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. (DE 9.)

4. Johnson does not allege that he was denied medical treatment. Rather, he alleges only that Dr. Razdan allegedly improperly performed a prostate biopsy and/or failed to appropriately monitor his follow-up care. (DE 9.). These allegations, even if true, are insufficient to state a §1983 claim.

5. To the extent that the allegations contained in the complaint constitute the basis for any claim, it is only one for medical negligence. But, as Johnson has failed to satisfy statutory requirements imposed by Florida law as a pre-requisite to filing such a claim, the action must be dismissed.

WHEREFORE, Defendant, Sanjay Razdan, M.D., respectfully requests that this Court enter an order: (i) granting this motion, in its entirety; (ii) dismissing this action; and/or (iii) for whatever other relief this court deems just and proper.

MOTION TO REQUIRE PLAINTIFF TO FILE AMENDED COMPLAINT CONTAINING NUMBERED PARAGRAPHS

In the alternative to and without waiving the arguments set forth in his motion to dismiss, Defendant, Dr. Razdan, requests this court to enter an order requiring plaintiff, Elbert Johnson, to file and amended complaint that complies with the Federal Rules of Civil Procedure. In support thereof, Razdan states as follows:

1. Rule 10(b) of the Federal Rules of Civil Procedure provides that: "[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed.R.Civ.Pro. 10(b) (emphasis added).

2. Plaintiff's complaint begins with what could loosely be characterized as paragraphs. (DE, p. 7-8.) But, beginning on page 9 and continuing through page 16, there is nothing but completely filled , single spaced, hand-written pages.

3. In the event that the motion to dismiss is denied and Dr. Razdan will be required to respond to the complaint, it will be extremely burdensome to respond.

WHEREFORE, Defendant, Sanjay Razdan, M.D., respectfully requests that this Court enter an order: (i) granting this motion; (ii) requiring plaintiff to file an amended complaint that complies with Rule 10(b); or (iii) for whatever other relief this Court deems just and proper.

CASE NO. 1:11-CV-21118-FAM

I HEREBY CERTIFY that on August 31, 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 identified on the attached Service List in the manner specified, either via transmission of Notices 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.

WICKER, SMITH, O'HARA, MCCOY & FORD, P.A.
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By: /s/ Patrick K. Dahl
Patrick K. Dahl
Florida Bar No. 084109

Service List

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Florida City, Florida 33034

69181-7

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:11-CV-21118-FAM
Magistrate Judge: Patrick White

ELBERT JOHNSON

Plaintiff,

vs.

SANJAY RAZDAN, M.D.

Defendant.

_____/

MEMORANDUM IN SUPPORT OF DR. RAZDAN'S MOTION TO DISMISS

Elbert Johnson ("Johnson"), an inmate at the Dade Correctional Institution ("Dade C.I.") filed a complaint against Dr. Razdan in which he suggests that the care and treatment provided by Dr. Razdan provided over a four month period rose to the level of a constitutional violation. But, Johnson's complaint fails to demonstrate how the actions taken by Dr. Razdan, even if true, are sufficient to support even the mere inference that Dr. Razdan acted in a matter that could be considered to be "deliberately indifferent" to Johnson's condition. At most, Johnson has alleged that Dr. Razdan was negligent, but allegations of mere negligence do not rise to the level of a constitutional violation and are insufficient to state a claim upon which relief can be granted. As such, the Complaint can and should be dismissed.

BACKGROUND[1]

A. Interactions with Dr. Razdan

In May 2010, Johnson was taken to Dr. Razdan's office where he underwent a prostate biopsy. (DE 9, p. 8.)[2] According to Johnson, that procedure was a painful and he was till bleeding after it was completed. (DE 9, p. 8.)

Following the procedure, Johnson was returned to Dade C.I. where he was, admittedly, monitored over night at the Dade C.I. medical facilities before being released. (DE 9, p. 9.) There is no allegation or indication that Dr. Razdan was ever notified of any continued problems or complications allegedly experienced by Johnson, including the Johnson's allegedly swollen testicle. (DE 9, p. 9.)

At some unspecified later date, Johnson was returned to Kendall Regional Medical Center where he was again seen by Dr. Razdan. (DE 9, p. 13.) There is no indication in the Complaint that Dr. Razdan was notified, prior to the subsequent visit, of Johnson's reported problems or his complications. During that interaction, Johnson was notified that he had liver damage but remained in the hospital for three days. (DE 9, p. 13.) He was again discharged and returned to Dade C.I. with a "urine bag." (DE 9, p. 13.)

Johnson had no problems for the next twenty two-days while the "urine bag" was in place. (DE 9, p. 13.) Then, three days after the urine bag was removed, he was rushed

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[1] The background section is derived from Johnson's complaint and accompanying exhibits. Dr. Razdan acknowledges that, for purposes of deciding a motion to dismiss, all factual allegations contained in the complaint are accepted as true. See *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). Dr. Razdan disputes the veracity of Johnson's allegations and citation to the Complaint should not be construed as an admission or acknowledgement that the allegations are true, correct, or accurate.

back to Dade C.I. medical and then back to Kendall Regional Medical Center where, according to Johnson, Dr. Razdan performed another procedure to treat a urinary blockage. (DE 9, p. 13-14.) Later in that same hospitalization, Johnson was told that his kidneys had been damaged and that he required further surgery. (DE 9, p. 14.)

In September 2010, within four months of the initial biopsy, Johnson returned to Kendall where he underwent another procedure. (DE 9, p. 15.) Following this four month course of treatment, Johnson allegedly cannot urinate, his right testicle is swollen, and he cannot achieve a proper erection. (DE 9, p. 15.)

B. The Complaint

Johnson subsequently, filed his *pro se* complaint in the United States District Court for the Southern District of Florida (the "Complaint"). (DE 9.) In the Complaint, Johnson attempts to portray the medical care and treatment he received as somehow being violative of the Eighth and Fourteenth Amendment's prohibition on cruel and unusual punishment. But, at most, Johnson's only complaint is that "during the prostate biopsy something was done wrong..." (DE 9, p. 15.)

The Complaint is devoid of necessary and required allegations to support a claim a §1983 claim against Dr. Razdan. There are no allegations from which it could even be inferred that Dr. Razdan acted with deliberate indifference to Johnson's alleged need. If anything, the Complaint contains allegations of medical negligence under Florida state law which, due to Johnson's failure to comply with Florida's statutory requirements, must be dismissed.

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[2] Johnson's complaint is set for in a series of handwritten pages. The citations to the Complaint correspond to the pagination as reflected on the Docket Entry, *i.e.*, p.8 corresponds to page 8 of the docket entry.

ARGUMENT

In *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) (applying *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) to "all civil actions"), the United States Supreme Court instructed federal courts to apply a "two-pronged approach" to motions to dismiss. First, a court should identify and discount "[t]hreadbare recitals of the cause of action, supported by mere conclusory statements" because such statements "are not well-pleaded factual allegations and are not entitled to an assumption of veracity." *Id.* at 1949. Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* This same standard applies when evaluating the sufficiency of a complaint under either Rule 12(b)(6) or 28 U.S.C. §1915(e)(2)(B). *Pintado v. Dora*, 2011 WL 794607, 3, n. 2 (S.D.Fla. 12011); citing *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997).

In the present action, Johnson purports to assert a claim an alleged violation of his constitutional rights. The Eighth Amendment prohibits any punishment which violations civilized standard of decency or "involve[s] the unnecessary and wanton infliction of pain." *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976). But, not ever claim by a prisoner that he has not received adequate medical treatment states a claim for violation of the Eighth Amendment. *McElligott v. Foley*, 182 F.3d 1248, 1254 (11th Cir. 1999); see also *Granada v. Schulman*, 372 Fed.Appx. 79, 82 (11th Cir. 2010).

To state a claim of inadequate medical treatment, a prisoner must allege facts that setting forth an objectively serious deprivation and a subjective intent to punish. *Granada*, 372 Fed.Appx. at 82; citing *Taylor v. Adamis*, 221 F.3d 1254, 1258 (11th Cir.

2000) (emphasis added). The objective element requires a plaintiff to allege: (1) the existence of an objectively serious medical need that if left unattended, poses a substantial risk of serious harm; and (2) that the response was poor enough to constitute an unnecessary and wanton infliction of pain, and not merely accidental inadequacy, negligence in diagnosis or treatment, or event medical malpractice actionable under state law. *Taylor*, 221 F.3d at 1258. The subjective or deliberate indifference element is established by pleading: (i) the actor's subjective knowledge of a risk of serious harm; (ii) the actor's disregard of that serious risk; and (iii) conduct that is more than mere negligence. *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004). In this case, Johnson's allegations fail to satisfy the deliberate indifference element.

A. JOHNSON HAS NOT ALLEGED FACTS SUPPORTING THE INFERENCE THAT DR. RAZDAN WAS DELIBERATELY INDIFFERENT

In order to state a claim, Johnson must demonstrate that Dr. Razdan acted wantonly, with deliberate indifference to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. *Id.* at 835-36. Allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eight Amendment claim of cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) ("mere incidents of negligence or malpractice do not rise to the level of constitutional violations"); *Pintado v. Dora*, 2011 WL 794607, at 10 (S.D.Fla. 2011).

1. The Complaint Should Be Dismissed Because There Are No Allegations Suggesting that Dr. Razdan Was Either Aware Of Or Disregarded A Risk Of Serious Harm

The subjective or deliberate indifference element requires Johnson to demonstrate, among other things, that Dr. Razdan knew of a substantial risk to Johnson and that Dr. Razdan ignored that risk. *Brown v. Johnson*, 387 F.3d 1344, 1351 (11th Cir. 2004). Here, there are no allegations suggesting that Dr. Razdan could have been aware the progression of complications complained of by Johnson or acted earlier. More to the point, the allegations themselves establish that when presented with Johnson's condition, Johnson was treated on each occasion.

In total, the Complaint is predicated upon four separate occasions in which Dr. Razdan interacted with Johnson: (i) the May 2010 biopsy; (ii) the first post-biopsy Kendall Hospitalization; (ii) the second post-biopsy Kendall hospitalization; and (iv) the subsequent surgery, all of which occurred within a four month span. But, from the allegations, there is nothing to support the inference that Dr. Razdan was deliberately indifferent to Johnson's condition.

With respect to the biopsy, Johnson alleges only that he had some pain and bleeding following the procedure. (DE 9, p. 9.) Johnson's significant complications did not present until the next day when he noticed that his "boxer was bloody and my right testic was swollen about the size of a golf ball." (DE 9, p. 9.) There is nothing to that Dr. Razdan was notified of this development, and ignored Johnson's condition. In fact, there are no allegations to the effect that he was even aware of the condition.

The first and second post-biopsy Kendall admissions provide even less support for the inference that Dr. Razdan was deliberately indifferent to Johnson's condition. According to the Complaint, Johnson was notified that he had liver damage and he was discharged with a "urine bag." (DE 9, p. 13.) He had twenty-two complaint free days without incident. (DE 9, p. 13.) Three days after the urine bag was removed, he developed further complications and was brought back to Kendall for the second post-biopsy admission where Dr. Razdan performed another procedure to remove Johnson's urinary blockage. (DE 9, p. 14.)

The chronology set forth in Johnson's complaint will not support an inference that Dr. Razdan either knew of or disregarded a serious risk. There are no allegations that Dr. Razdan was either aware of or ignored the progression of complications Johnson experienced following the biopsy. At Kendall, Johnson was treated and discharged and spent 22 days complication free. When he again experienced complications, Dr. Razdan provided treatment to address those issues and, in September, performed surgery.

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Put simply, the set out in Johnson's own complaint will not support an inference of deliberate indifference. There are no allegations that Dr. Razdan was either aware of or ignored the complications Johnson experienced following the biopsy. At Kendall, Johnson was treated and discharged and spent 22 days complication free. When he again experienced complications, Dr. Razdan provided treatment to address those issues and, in September, performed surgery.

2. Johnson Has Failed to Allege Facts Suggesting That Dr. Razdan Was Anything More Than Negligent

In addition to being required to demonstrate that Dr. Razdan knew of a risk of harm to Johnson and ignored it, Johnson is required to demonstrate conduct by Dr. Razdan that is "more than mere negligence." *Brown*, 387 F,.3d at 1351. This element

can be established a variety of ways: (i) by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons[3]; (ii) evidence of treatment "so cursory as to amount to no treatment at all[4]; or even (iii) taking an easier, but less efficacious treatment.[5] But, all that has been alleged is that Dr. Razdan something was done wrong during the biopsy to cause his subsequent problems. (DE 9, p. 15.)

Johnson has not alleged how the biopsy was performed improperly. He has not suggested that some alternative procedure was indicated or should have been performed. In addition, he has not provided any facts suggesting that there was somehow some inappropriate delay, by Dr. Razdan, in providing treatment. Rather, all that Johnson has alleged is a series of events followed by the conclusion that Dr. Razdan must have done something wrong. That is insufficient to satisfy Johnson's burden of demonstrating that Dr. Razdan's rose to something more than mere negligence.

B. B. TO THE EXTENT THAT JOHNSON'S ALLEGATIONS COULD BE CONSTRUED TO STATE A CLAIM FOR ANYTHING, IT IS ONLY A STATE LAW CLAIM FOR MEDICAL NEGLIGENCE, A CLAIM WHICH MUST BE DISMISSED BECAUSE JOHNSON FAILED TO FULFILL STATUTORY CONDITIONS PRECEDENT

To the extent that Johnson's complaint could be construed to state a claim for anything, it could only be a state law medical negligence action. But, as Johnson has totally ignored the requirements for maintaining such a claim, the complaint can and should be dismissed.

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[3] *Farrow v. West*, 320 F.3d 1235

[4] *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700 (11th Cir. 1985)

[5]

As the 11th Circuit has observed, "Florida law requires that before filing any claim for personal injury or wrongful death arising from medical malpractice, the claimant conduct an investigation of the claim and send the defendant(s) a notice of intent to sue, along with a corroborating opinion by a medical expert." *Johnson v. McNeil*, 278 Fed.Appx. 866, 871 (11th Cir. 2008); citing Fla.Stat.Ann. §766.203(2). Furthermore, "Florida law mandates the dismissal of a claim for medical malpractice when the pre-suit requirements have not been fulfilled." *Johnson*, 278 Fed.Appx. at 872; citing Fla.Stat.Ann. §766.206(2).

In this case, as in *Johnson*, Johnson failed to comply with Florida's pre-suit requirements. Accordingly, to the extent that Johnson could conceivably state malpractice claim, his failure to satisfy Florida's statutory requirements mandates dismissal. *Id.* (affirming district court's dismissal of state law medical malpractice claims for plaintiff's failure to comply with pre-suit requirements.)

CONCLUSION

Johnson's attempt to state a claim is fatally deficient. The allegations, even if true, do not amount to the deprivation of a constitutional right. If anything, the complaint alleges only state law claim for medical negligence; a claim which, due to Johnson's failure to comply with statutory pre-requisites, must be dismissed. Therefore, Dr. Razdan respectfully requests that this Court enter an order granting his motion and dismissing the Complaint, in its entirety and with prejudice.

CASE NO. 1:11-CV-21118-FAM

I HEREBY CERTIFY that on August 31, 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 identified on the attached Service List in the manner specified, either via transmission of Notices 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.

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CASE NO. 1:11-CV-21118-FAM

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