

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:12-cv-81423-KLR**

Watts v. Ferrerow et al
Assigned to: Senior Judge Kenneth L. Ryskamp
Referred to: Magistrate Judge Patrick A. White
Cause: 28:1983 Civil Rights

Date Filed: 12/31/2012
Jury Demand: Defendant
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff**Willie Watts**

represented by **Willie Watts**
044312
South Bay Correctional Facility
Inmate Mail/Parcels
600 US Highway 27 South
South Bay, FL 33493
PRO SE

V.

Defendant

Nurse D Ferrerow
In his personal capacity

represented by **Gregory A. Kummerlen**
Wiederhold, Moses, Kummerlen
& Waronicki, P.A.
560 Village Boulevard, Suite 240
PO Box 3918
West Palm Beach, FL 33402
561-615-6775
Fax: 615-7225
Email: gkummerlen@wmrfla.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

ARNP John G Wade
In his personal capacity

represented by **Gregory A. Kummerlen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/31/2012	<u>1</u>	COMPLAINT against All Defendants. Filing fee \$ 350.00, filed by Willie Watts.(ots) (Entered: 12/31/2012)
12/31/2012	2	Judge Assignment to Senior Judge Kenneth L. Ryskamp (ots) (Entered: 12/31/2012)
12/31/2012	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. (ots) (Entered: 12/31/2012)
01/03/2013	<u>4</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 1/3/2013. (br) (Entered: 01/03/2013)
01/03/2013	<u>5</u>	ORDER REQUIRING PAYMENT OF FILING FEE OR FILING OF MOTION TO PROCEED IFP WITH DETAILED AFFIDAVIT: Filing Fee due by 1/25/2013. Motions due by 1/25/2013. Signed by Magistrate Judge Patrick A. White on 1/3/2013. (Attachments: # <u>1</u> IFP form) (br) (Entered: 01/03/2013)

01/17/2013	<u>6</u>	MOTION for Leave to Proceed in forma pauperis by Willie Watts. (cbr) (Entered: 01/18/2013)
01/22/2013	<u>7</u>	MOTION for Leave to Proceed in forma pauperis by Willie Watts. (tpl) (Entered: 01/23/2013)
02/05/2013	<u>8</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>6</u> Motion for Leave to Proceed in forma pauperis; granting <u>7</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 2/5/2013. (tw) (Entered: 02/05/2013)
02/07/2013	<u>9</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Willie Watts. Recommending 1. The case shall proceed against Defendants Ferrerow and Wade for denial of adequate medical treatment. 2. Service will be ordered by separate order. Objections to RRdue by 2/25/2013 Signed by Magistrate Judge Patrick A. White on 2/7/2013. (tw) (Entered: 02/07/2013)
02/11/2013	<u>10</u>	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:Nurse D. Ferrerow, South Bay Correctional Facility, 600 U.S. Highway 27 South, South Bay, FL 33493 and John G. Wade, ARNP, South Bay Correctional Facility, 600 U.S. Highway 27 South,South Bay, FL 33493. Signed by Magistrate Judge Patrick A. White on 2/11/2013. (tw) (Entered: 02/11/2013)
02/13/2013	<u>11</u>	Summons Issued as to D Ferrerow. (br) (Entered: 02/13/2013)
02/13/2013	<u>12</u>	Summons Issued as to John G Wade. (br) (Entered: 02/13/2013)
02/21/2013	<u>13</u>	MOTION for Appointment of Counsel by Willie Watts. Responses due by 3/11/2013 (asl) (Entered: 02/21/2013)
02/25/2013	<u>14</u>	ORDER denying <u>13</u> Motion to Appoint Counsel Signed by Magistrate Judge Patrick A. White on 2/25/2013. (cz) (Entered: 02/25/2013)
03/21/2013	<u>15</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline John G Wade served on 3/13/2013, answer due 4/3/2013. (ral) (Entered: 03/22/2013)
03/21/2013	<u>16</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline D Ferrerow served on 3/13/2013, answer due 4/3/2013. (ral) (Entered: 03/22/2013)
03/27/2013	<u>17</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by D Ferrerow, John G Wade.(Kummerlen, Gregory) (Entered: 03/27/2013)
03/29/2013	<u>18</u>	ORDER Scheduling Pretrial Proceedings when Plaintiff is Proceeding Pro Se: Amended Pleadings due by 8/9/2013. Discovery due by 7/26/2013. Dispositive Motions due by 8/30/2013. Pretrial Statement due for the Plaintiff on 9/13/13 and for the Defendants 9/27/13. Signed by Magistrate Judge Patrick A. White on 3/28/2013. (br) (Entered: 03/29/2013)
07/16/2013	<u>19</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS OF MAGISTRATE JUDGE; ratifying, affirming and approving <u>9</u> Report and Recommendations. Certificate of Appealability: No Ruling. Signed by Senior Judge Kenneth L. Ryskamp on 07/16/2013. (yar) (Entered: 07/16/2013)

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

FILED by **OTS** D.C.
ELECTRONIC
Dec 31, 2012
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

UNITED STATES DISTRICT COURT
Southern District of Florida
12-81423-CIV-Ryskamp/White
Case Number: _____

Willie Watts

(Enter the full name of the plaintiff in this action)

v.

NURSE D. Ferrarow - In his Personal Capacity

ARNP John G. Wade - In his Personal Capacity

(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.

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

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: Willie Watts
Inmate #: 044312
Address: 600 U.S. Hwy 27 South
South Bay, Florida 33493

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: Nurse D. Ferrerom
is employed as Nurse
at South Bay Correctional Facility
C. Additional Defendants: ARNP Mrs. John G. WADE
ARNP
South Bay Correctional Facility

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

III. Relief

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

- 1. This Honorable Court to declare that the acts and omissions described herein violated plaintiffs rights under the U.S. Constitution and it's laws of the U.S.
- 2. All cost and fees be set against the defendants.
- 3. Compensatory damages in the amount of 250,000.00
- 4. Punitive damages of 800,000.00
- 5. Nominal damages of 150,000.00
- DAMAGES AGAINST EACH NAMED DEFENDANT INDIVIDUALLY
- 6. GRANT ALL OTHER JUST AND EQUITABLE RELIEF THIS HONORABLE COURT DEEMS NECESSARY

IV. Jury Demand

Do you demand a jury trial? Yes No

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

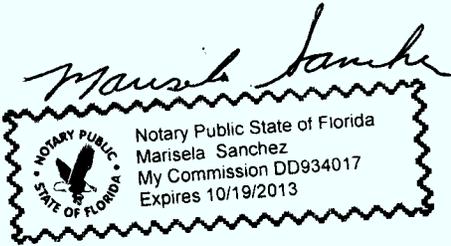
Signed this 27 day of December, 2012

W. Watt
(Signature of Plaintiff)

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

Executed on: _____

W. Watt
(Signature of Plaintiff)



STATEMENT OF CLAIM

- 1.) On 11-3-11 I fell breaking my right leg.
- 2.) Nurse D. Ferrerow and an Inmate medical orderly came and got me with a wheel chair.
- 3.) I told Ferrerow that I heard a crunching / snapping sound when I fell and I believe I broke something. I also told him the pain was getting unbearable and making me feel like I was going to pass out.
- 4.) My foot and leg were swollen to the size of a football and extremely painful to touch or move.
- 5.) Nurse Ferrerow said I just sprained something so he gave me a few packs of Ibuprofen, Ace Bandage, Ice pack and some crutches with passes for the crutches and Ice pack. Then he told me to go back to my dorm.
- 6.) He also told me I would be called out for X-Rays and never referred me to the doctor and he told me I couldn't see doctor until X-Rays done.
- 7.) It took two weeks (11-17-11) to get X-Rays done and I was left in severe pain and suffering. And to walk with crutches on a broken leg.
- 8.) The same day I had X-Rays done 11-17-11 I saw ARNP John G. Wade who told me I would have to go to outside hospital as X-Rays showed break in my right leg, but the bones had started to heal wrong.
- 9.) On 11-19-11 I went to Lakeside Hospital in Belle Glade Florida to have an MRI done. And once back from MRI Wade said I would have to have surgery involving re-breaking my leg and putting a plate and screws in it.

- 10.) On 11-30-11 I was sent to Wellington Medical Center. There I saw DR. Simmons the Surgeon. Who told me my leg was the way it was due to South Bay's medical staff's poor and delayed treatment of my leg.
- 11.) I had Surgery on 12-9-11 and stayed in the hospital for three days.
- 12.) On 1-13-12 DR. Simmons ordered for me to have physical Therapy, but ARNP Wade has refused to get me the needed therapy due to budget of South Bay and South Bay's medical Second guessing the orders of DR. Simmons.
- 13.) DR. Simmons has personally gotten on to MR. Wade to get me the needed physical therapy he ordered. And DR. Simmons keeps re ordering it and did so again on 4-19-12. That was over four months after first ordering it.
- 14.) It's very painful and almost impossible to walk in soft cast. I'm in a wheel chair. My broken leg is still not getting better and causing me severe pain daily and I'm unable to properly move around to do daily activities such as getting my food tray, bathing, getting dressed, unable to get any outside physical Recreation yard for exercise. I'm always in severe pain if I have to stand on my leg or move it too much.
- 15.) I've been told to get pain meds from my dorm which I told MR. Wade wasn't enough to stop my pain and that I cannot always get them from staff. Staff refuse you, they are out or other reasons. Thus DR. Simmons finally gave me on my 4-19-12 visit Celebrex 200mg.
- 16.) Never got physical therapy until 5-7-12 which was ordered back on 1-13-12. Thus almost five months later. Thus not helping my leg, but making it worse.
- 17.) Nurse Ferrarow refused to allow me to see a doctor and made me suffer in severe pain for two weeks waiting for X-Rays to be taken. Thus due to the waiting my leg bone grew back

wrong and I had to have an operation in which my leg had to be rebroken and screws and a plate put in. It took almost five months to get me the ordered physical therapy. There is no justification for these delays or actions by defendants. I've been made to suffer in severe pain when relief was available if sought and timely gotten.

18.) Also since 2001 I saw a foot doctor who told me I would need special shoes for the whole time I was in prison. I received them at all my facilities since 2001. I was getting New Balance sneakers from FDOC, but once at South Bay they said their budget doesn't provide New Balance, but they at first gave some cheap sneakers.

19.) But now ARNP Wade on 4-27-12 told me that South Bay doesn't give out any special shoes as their budget doesn't have funds to provide such.

20.) I grieved it and Dr. Heller now states I don't have problems with my feet to warrant special shoes and was told such on 4-27-12. Dr. Heller nor ARNP Wade are foot specialists and are overruling the specialist orders and findings to save money for South Bay and its budget. Yet I still need shoes especially with yet ~~the~~ the leg injury also.

21.) They have special boots also which I wasn't given and the boots I was wearing when I broken my leg were not special boots or shoes to support my feet/ankles.

22.) I can't get needed health care and I'm being denied needed health care which has caused and continues to cause me severe pain and suffering.

23.) All issues I've grieved have gone through the inmate grievance process thus I've exhausted my grievance process on these claims and allegations of fact. All the grievances and appeals are attached.

**SOUTH BAY CORRECTIONAL FACILITY
HEALTH SLIP/PASS**

The below-named inmate is authorized for:

- Bed rest lay-in From 11/11/11 To 11/11/11
- Low/bottom bunk From To
- No shave From To
- Restricted activity From 11/3/11 To 11/17/11

Restrictions: None

Other: From 11/3/11 To 11/17/11

Inmate Watts, Willie
DCH 44313 R/S 13/11
Date of Birth 06-06-55
Institution SBCF

Authorized
By [Signature]
(Initial & Name Stamp)
Date: 11-13-11

Comparable to
DC4-701D

**SOUTH BAY CORRECTIONAL FACILITY
HEALTH SLIP/PASS**

The below-named inmate is authorized for:

- Bed rest lay-in From To
- Low/bottom bunk From To
- No shave From To
- Restricted activity From 11/10/11 To 11/20/11

Restrictions: Crate

Other: Exercise From 11/10/11 To 11/20/11

Inmate Watts, Willie
DCH 44313 R/S 13/11
Date of Birth 5/6/55
Institution SBCF

Authorized
By [Signature]
(Initial & Name Stamp)
Date: 11/9/11

Comparable to
DC4-701D

J. DAUPHIN, D.O.
MEDICAL DIRECTOR
S.B.C.F.

**SOUTH BAY CORRECTIONAL FACILITY
HEALTH SLIP/PASS**

The below-named inmate is authorized for:

- Bed rest lay-in From To
- Low/bottom bunk From To
- No shave From To
- Restricted activity From To

Restrictions: None

Other: From 11/3/11 To 11/8/11

Inmate Watts, Willie
DCH 44313 R/S 13/11
Date of Birth 06-06-55
Institution SBCF

Authorized
By [Signature]
(Initial & Name Stamp)
Date: 11-3-11

Comparable to
DC4-701D

**SOUTH BAY CORRECTIONAL FACILITY
HEALTH SLIP/PASS**

The below-named inmate is authorized for:

- Bed rest lay-in From To
- Low/bottom bunk From 12/13/11 To 1/15/12
- No shave From To
- Restricted activity From 12/13/11 To 1/15/12

Restrictions: Crate

Other: From 12/13/11 To

Inmate Watts, Willie
DCH 44313 R/S 13/11
Date of Birth 5/6/55
Institution SBCF

Authorized
By [Signature]
(Initial & Name Stamp)
Date: 12/13/11

Comparable to
DC4-701D

J. DAUPHIN, D.O.
MEDICAL DIRECTOR
S.B.C.F.

D1103

SOUTH BAY CORRECTIONAL FACILITY

RECEIPT FOR ACCOUNTABLE ITEMS

Inmate Name: WAL WILC DC# 044312

I hereby acknowledge receipt of this: (Check One)

- orthotics
- crutches
- hearing aid
- blanket
- wheelchair
- cane
- ace bandage
- brace (specify _____)
- elastic stockings
- splint (specify _____)
- athletic supporter
- other (specify _____)

Check which statement applies:

I agree to take care of these _____
I understand that in the event of loss, misuse or abuse, I will not be issued another within a one year period. If I am transferred or released from South Bay C. F., I will be allowed to take this item with me.

I understand that I am temporarily being issued this item (specify item (s) crutches) so that my medical treatment can continue. I agree to take care of this. I am being issued this item from 1/13/14 to 1/15/12. I understand that I must return this to the Medical Department upon request or end of treatment.

I understand that I am being issued this item while I am incarcerated at South Bay C.F. I agree to take care of this item. Upon transfer or release, I will return this item to the Medical Department.

I understand that if I misuse or use this item as a weapon it will be taken from me and I can have disciplinary action taken against me.

[Signature]
Inmate's Signature _____ Date 1/13/14

[Signature]
Witness's Signature _____ Date 1/13/14

C. Dixon, RN
S.B.C.F.

Distribution: White - Health Record Canary - Accountability Log
Pink - Security Golden Rod - Inmate's Record

3

FLORIDA DEPARTMENT OF CORRECTIONS
CALL OUT
PASS FOR APPOINTMENT (INSIDE INSTITUTION)

APPOINTMENT DATE: 11/19/11
APPOINTMENT TIME: 08:31 A.M.

PATIENT NAME: WATTS, WILLIE DOC NUMBER: 044312
CURRENT STATUS: A ACTIVE
WORK ASSIGNMENT: HOUSEMAN
FACILITY LOCATION: 405SOUTH BAY C.F.
HOUSING QUARTERS: C1110L
SEND TO: MEDICAL CLINIC
REQUESTED BY:

FLORIDA DEPARTMENT OF CORRECTIONS
CALL OUT
PASS FOR APPOINTMENT (INSIDE INSTITUTION)

APPOINTMENT DATE: 12/05/11
APPOINTMENT TIME: 10:30 A.M.

PATIENT NAME: WATTS, WILLIE DOC NUMBER: 044312
CURRENT STATUS: A ACTIVE
WORK ASSIGNMENT: HOUSEMAN
FACILITY LOCATION: 405SOUTH BAY C.F.
HOUSING QUARTERS: C1110L
SEND TO: MEDICAL CLINIC
REQUESTED BY: WD02 WADE, JOHN G

FLORIDA DEPARTMENT OF CORRECTIONS
CALL OUT
PASS FOR APPOINTMENT (INSIDE INSTITUTION)

APPOINTMENT DATE: 12/07/11
APPOINTMENT TIME: 09:31 A.M.

PATIENT NAME: WATTS, WILLIE DOC NUMBER: 044312
CURRENT STATUS: A ACTIVE
WORK ASSIGNMENT: HOUSEMAN
FACILITY LOCATION: 405SOUTH BAY C.F.
HOUSING QUARTERS: C1110L
SEND TO: MEDICAL CLINIC
REQUESTED BY: MI73 MILLNER, MONICA

N O T E : FAILURE TO COMPLY WITH THIS CALL OUT CONSTITUTES
DISOBEYANCE OF AN ORDER AND MAY RESULT IN DISCIPLINARY
ACTION AGAINST YOU.

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

RECEIVED

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

MAY 21 2012

TO: Warden Assistant Warden

Secretary, Florida Department of Corrections
DEPARTMENT OF CORRECTIONS
GRIEVANCES

From: Watts, Willie 044312 South Bay
Last First Middle Initial Number Institution
12-6-16373

Part A - Inmate Grievance

I'm appealing medical grievance with log # 1204-405-060 about my need for special shoes which was denied. Now Dr. Heller states I was informed on 4-27-12 that my current condition doesn't meet the FDOS Therapeutic Shoe Guidelines. Now I spoke with ARNP John Wade who is not a foot specialist. Now since 2001 I've been getting special shoes. A foot specialist at ARC who told me I will need special the whole time I am in FDOC. Now MR. Wade told me that they don't give shoes out due to budget reasons. That it has nothing to do with I don't meet FDOS Guidelines its cost period. Plus I'm costing them money due to my broke leg which I had to have an operation on and get a plate & screws in my leg. Plus therapy which they kept skilling since January 2012 until just the other day 5-9-12. DR. Heller has never seen my feet and he nor Wade are Specialist like one I'd seen. And they was even giving me special shoes but due to budget cuts they stopped my shoes. (Remedy Sought) To provide me with my special shoes that Specialist ordered.

5-10-12
DATE

Willie Watts # 044312
SIGNATURE OF GRIEVANT AND D.C. #

*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 01 NONE
Signature

PART B - RESPONSE

SEE ATTACHED
RESPONSE

405
07E
1204-405-060

TB

SIGNATURE AND TYPED OR PRINTED NAME SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE DATE

PART B - RESPONSE

<u>WATTS, WILLIE</u> INMATE	<u>044312</u> NUMBER	<u>12-6-16373</u> GRIEVANCE LOG NUMBER	<u>SOUTH BAY C.F.</u> CURRENT INMATE LOCATION	<u>D1108L</u> HOUSING LOCATION
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Appeal Denied:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

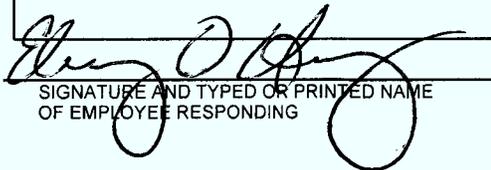
It is determined that the response made to you by Dr. Heller on 5/8/12 appropriately addresses the issues you presented.

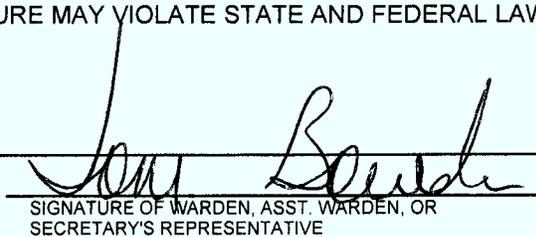
It is the responsibility of your Chief Health Officer to determine the appropriate treatment regimen for the condition you are experiencing including special shoes.

Should you experience problems, sick call is available so that you may present your concerns to your health care staff.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR ADDRESSEE(S) ONLY.
UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Ebony O. Harvey IISC


SIGNATURE AND TYPED OR PRINTED NAME
OF EMPLOYEE RESPONDING

 7/3/12
SIGNATURE OF WARDEN, ASST. WARDEN, OR
SECRETARY'S REPRESENTATIVE DATE

COPY DISTRIBUTION - INSTITUTION / FACILITY
(2 Copies) Inmate
(1 Copy) Inmate's File
(1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE
(1 Copy) Inmate
(1 Copy) Inmate's File - Inst./Facility
(1 Copy) C.O. Inmate File
(1 Copy) Retained by Official Responding

RECEIVED /
MAY 13 2012

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCES

TO: Warden

Assistant Warden

Secretary, Florida Department of Corrections

From: Watts, Willie
Last First Middle Initial

044312

SBCF

Institution

12-6-15840

Part A - Inmate Grievance

I'm appealing medical grievance Log 1204-405-048. It's very clear from my medical file I'm not receiving timely care, the care ordered, and care needed for my injury of a broken leg which happened on 11-3-11. It took 2 weeks to get X-Rays even with my foot the size of football and leg swollen. X-Ray done 11-17-11. Finally got to see ARNP 11-17-11. Sent for MRI 11-19-11 which revealed I broke my right leg and it was healing wrong due to the two week wait for X-Rays. Had Surgery 12-9-11. DR. Simmons who put screws and a plate in my leg ordered physical therapy 1-15-12. SAW DR. Simmons again 2-10-12 he ordered Therapy and still none. As stated in response the consult wasn't put in for therapy until 3-5-12 almost 2 months after ordered and still no therapy to date over two more months since consult submitted. DR. Simmons keeps on MR. needs to get me therapy but can't get any. Staff keep having deliberate indifference to my medical needs which are serious. Remedy sought: To get physical therapy as ordered and all medical care needed timely and stop my pain & suffering.

Willie Watts *044312
SIGNATURE OF GRIEVANT AND D.C. #

5-5-12
DATE

*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 0 / NONE
Signature

PART B - RESPONSE

SEE ATTACHED
RESPONSE

SIGNATURE AND TYPED OR PRINTED NAME
OF EMPLOYEE RESPONDING

WB
SIGNATURE OF WARDEN, ASST. WARDEN, OR
SECRETARY'S REPRESENTATIVE

405
07H
1204405-048
DATE

RECEIVED
JUN 28 2012
DEPARTMENT OF CORRECTIONS
OFFICE OF INMATE COMPLAINTS

PART B - RESPONSE

WATTS, WILLIE 044312 12-6-15840 SOUTH BAY C.F. D1108L
INMATE NUMBER GRIEVANCE LOG NUMBER CURRENT INMATE LOCATION HOUSING LOCATION

Appeal Denied:

Your request for administrative remedy was received at this office and it was carefully evaluated. Records available to this office were also reviewed.

In addition, the institution was contacted and they provided this office with information regarding the issues you presented.

It is determined that the response made to you by Dr. Heller on 5/1/12 appropriately addresses the issues you presented.

It is the responsibility of your Chief Health Officer to determine the appropriate treatment regimen for the condition you are experiencing.

Records reviewed indicate that you were seen by the physical therapist on 5/7/12, 5/9/12, 5/21/12, 5/25/12, 6/1/12, and 6/4/12.

You are encouraged to cooperate with your health care staff by following the treatment regimen prescribed.

Should you experience problems, sick call is available so that you may present your concerns to your health care staff.

CONFIDENTIAL HEALTH RECORD/CARE INFORMATION INTENDED FOR ADDRESSEE(S) ONLY.
UNAUTHORIZED RELEASE OR DISCLOSURE MAY VIOLATE STATE AND FEDERAL LAW.

Ebony O. Harvey IISC

Ebony O. Harvey *[Signature]* 6/21/12
SIGNATURE AND TYPED OR PRINTED NAME SIGNATURE OF WARDEN, ASST. WARDEN, OR DATE
OF EMPLOYEE RESPONDING SECRETARY'S REPRESENTATIVE

COPY DISTRIBUTION - INSTITUTION / FACILITY
(2 Copies) Inmate
(1 Copy) Inmate's File
(1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE
(1 Copy) Inmate
(1 Copy) Inmate's File - Inst./Facility
(1 Copy) C.O. Inmate File
(1 Copy) Retained by Official Responding

and showed something wrong. It took two weeks for me to get X-Rays which were done 11-17-11. I then saw ARNP Wade who informed me I would have to go to outside hospital as X-Rays showed my leg was broken and the bones were healing together wrong. So on 11-19-11 I went to Lakeside Hospital in Belle Glade to get an MRI done, once back from MRI MR. Wade said I would need surgery which involved re-breaking my leg and not only was it re-broke but a plate and screws put in. On 11-30-11 sent to Wellington Medical Center where I saw DR. Simmons. Now DR. Simmons told me my leg was messed up the way it was due to SBCF's medical staff not timely or properly dealing with my broken leg. DR. Simmons did the surgery on 12-9-11 and I stayed in hospital for 3 days. DR. Simmons ordered physical therapy and has got onto MR. Wade about not getting me to any therapy. I've not received any physical therapy as ordered to date. Now when I've returned from outside medical last two times Nurse Tremble wouldn't allow me to see the doctor as your suppose to once returning from outside medical even when she knew of my severe injuries and I told her I needed to tell MR. Wade what DR. Simmons told me to tell him, but she refused to allow me to see MR. Wade saying he didn't wish to see me period. I still have a soft cast on my leg and I'm in severe pain daily. I still can't walk on my leg and it doesn't feel any better, but to be getting worse and more painful. I need the physical therapy DR. Simmons ordered. Ms. Steele from medical said I'm still wait for such therapy. So as you can see all the problems I've had since the start of breaking my leg in getting needed medical care. I don't know what else I can do to get what I need and keep begging for it, but it's like it's falling on deaf ears with no one wanting to help me.

REmedy Sought: To get the ordered physical therapy and follow ups with DR. Simmons to get my leg fixed and to relieve my pain and suffering which medical has the ability to do if they want. Also I want to see DR. Heller the new medical director to show him my leg and explain what's going on and my medical problems with my leg.

DATE

4-18-12

Willie Watts

Willie Watts DC# 044312

2

PART B - RESPONSE

<u>WATTS, WILLIE</u> INMATE	<u>044312</u> NUMBER	<u>1204-405-048</u> GRIEVANCE LOG NUMBER	<u>SOUTH BAY C.F.</u> CURRENT INMATE LOCATION	<u>D1108L</u> HOUSING LOCATION
--------------------------------	-------------------------	---	--	-----------------------------------

YOUR REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL HAS BEEN RECEIVED AND REVIEWED.

YOUR COMPLAINT IS THAT YOU HAVE NOT RECEIVED THE PHYSICAL THERAPY ORDERED BY THE DOCTOR WHO DID SURGERY ON YOUR LEG.

RECORDS INDICATE YOUR PROVIDER SUBMITTED A CONSULT FOR PHYSICAL THERAPY ON 3/5/2012. YOUR CONSULT HAS BEEN APPROVED AND YOU ARE SCHEDULED FOR PHYSICAL THERAPY.

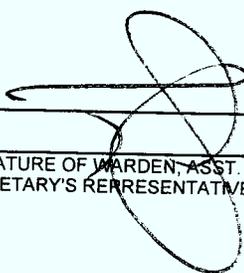
BASED ON THE ABOVE INFORMATION, YOUR GRIEVANCE IS DENIED.

YOU MAY OBTAIN FURTHER ADMINISTRATIVE REVIEW OF YOUR COMPLAINT BY OBTAINING FORM DC1-303, COMPLETING THE FORM, PROVIDING ATTACHMENTS AS REQUIRED BY 33-102.007 AND FORWARDING TO THE OFFICE OF INMATE GRIEVANCE APPEALS, 501 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32399-2500.

Dr. J. Heller, Medical Director



J. Heller, M.D.
S.B.C.F.



5/1/2012
DATE

SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING

SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE

COPY DISTRIBUTION - INSTITUTION / FACILITY
 (2 Copies) Inmate
 (1 Copy) Inmate's File
 (1 Copy) Retained by Official Responding

COPY DISTRIBUTION - CENTRAL OFFICE
 (1 Copy) Inmate
 (1 Copy) Inmate's File - Inst./Facility
 (1 Copy) C.O. Inmate File
 (1 Copy) Retained by Official Responding

2

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

<u>WATTS, WILLIE</u>	<u>044312</u>	<u>1204-405-048</u>	<u>SOUTH BAY C.F.</u>	<u>D1108L</u>
NAME	NUMBER	GRIEVANCE LOG NUMBER	CURRENT INMATE LOCATION	HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

07H (INADEQUATE TREATMENT (MEDICAL))

4/20/12
DATE

1204-405-048
GRIEVANCE LOG NUMBER

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

RECEIVED
APR 30 2012
GRIEVANCE COORDINATOR

1204-405-060
finise

REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

TO: Warden Assistant Warden Secretary, Florida Department of Corrections

From: Watts, Willie 044312 South Bay CF
Last First Middle Initial Number Institution

Part A - Inmate Grievance

This is a medical grievance writ after seeing Mr. Wade today 4-27-12 and we spoke about my getting special shoes which I've been receiving since 2001. When at Polk CF I went and saw a specialist who told me I would be receiving special sneakers which were New Balance. Once I got to SBCE I was told that SBCE's budget wouldn't supply New Balance shoes to me, but they provided some Valcom shoes but they didn't have the support as New Balance sneakers do. Mr. Wade confirms its in my medical jacket but Wade said the facility doesn't want to give out shoes anymore due to the budget. Now I need these shoes even more since I broke my leg on 11-3-11 and had to have a plate and screws put in my right leg. I had filled out a blue paper for a foot specialist consult, but they don't want me to go see one now due to budget problems. (Remedy Sought) To be given my shoes as I've been getting since 2001 ordered by specialist. Budget cuts cannot stop me getting needed and ordered shoes from a specialist.

4-27-12
DATE

Willie Watts # 044312
SIGNATURE OF GRIEVANT AND D.C. #

*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS: 0 / NONE
Signature

PART B - RESPONSE

SEE ATTACHED RESPONSE

SIGNATURE AND TYPED OR PRINTED NAME
OF EMPLOYEE RESPONDING

SIGNATURE OF WARDEN, ASST. WARDEN, OR
SECRETARY'S REPRESENTATIVE

DATE

PART B - RESPONSE

WATTS, WILLIE INMATE	044312 NUMBER	1204-405-060 GRIEVANCE LOG NUMBER	SOUTH BAY C.F. CURRENT INMATE LOCATION	D1108L HOUSING LOCATION
-------------------------	------------------	--------------------------------------	---	----------------------------

YOUR REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL HAS BEEN RECEIVED AND REVIEWED. YOUR COMPLAINT IS THAT YOU ARE BEING DENIED SPECIAL SHOES THAT YOU HAVE BEEN RECEIVING SINCE 2001. RECORDS INDICATE YOU WERE INFORMED ON 4/27/2012 THAT YOUR CURRENT CONDITION DOES NOT MEET THE DEPARTMENT OF CORRECTIONS THERAPEUTIC SHOES GUIDELINES. BASED ON THE ABOVE INFORMATION, YOUR GRIEVANCE IS DENIED. YOU MAY OBTAIN FURTHER ADMINISTRATIVE REVIEW OF YOUR COMPLAINT BY OBTAINING FORM DC1-303, COMPLETING THE FORM, PROVIDING ATTACHMENTS AS REQUIRED BY 33-102.007 AND FORWARDING TO THE OFFICE OF INMATE GRIEVANCE APPEALS, 501 SOUTH CALHOUN STREET, TALLAHASSEE, FLORIDA 32399-2500.

Dr. J. Heller, Medical Director



J. Heller, MD

S.B.C.F.

SIGNATURE AND TYPED OR PRINTED NAME OF EMPLOYEE RESPONDING

SIGNATURE OF WARDEN, ASST. WARDEN, OR SECRETARY'S REPRESENTATIVE

5/8/2012
DATE

- COPY DISTRIBUTION - INSTITUTION / FACILITY
- (2 Copies) Inmate
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- COPY DISTRIBUTION - CENTRAL OFFICE
- (1 Copy) Inmate
 - (1 Copy) Inmate's File - Inst./Facility
 - (1 Copy) C.O. Inmate File
 - (1 Copy) Retained by Official Responding

PLEASE BE ADVISED THAT TALLAHASSEE NEVER DID REPLY TO GRIEVANCE 1204-405-060 AND 1204-405-048, WHICH HAS BEEN IN TALLAHASSEE CLOSE TO A YEAR NOW, AND THEY HAVE NOT RESPONDED TO THEM AS OF THIS DAY.

3

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

<u>WATTS, WILLIE</u>	<u>044312</u>	<u>1204-405-060</u>	<u>SOUTH BAY C.F.</u>	<u>D1108L</u>
NAME	NUMBER	GRIEVANCE LOG NUMBER	CURRENT INMATE LOCATION	HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

07E (MEDICAL PASSES (MEDICAL))

<u>4/30/12</u>	<u>1204-405-060</u>
DATE	GRIEVANCE LOG NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81423-CIV-RYSKAMP
MAGISTRATE JUDGE P.A. WHITE

WILLIE WATTS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>REPORT OF</u>
	:	<u>MAGISTRATE JUDGE</u>
NURSE FERROROW, et al.,	:	
	:	
Defendants.	:	

I. Introduction

Willie Watts, confined at the South Bay Correctional Facility, filed a pro se civil rights complaint, seeking monetary and injunctive relief. (DE#1) The plaintiff is proceeding in forma pauperis.

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

II. Analysis

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.

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).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997).

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

A. Statement of Claims

The plaintiff claims that Nurses Ferrorow and Wade denied him adequate medical treatment. He relates that in November of 2011, the plaintiff fell and broke his right leg. He informed Ferrorow he had heard a "crunching/snapping sound" and was in severe pain. His leg and foot were extremely swollen. Ferrorow diagnosed the injury as a sprain and provided him with Ibuprofen, an ace bandage, an ice pack, and crutches, and told him to return to his dormitory. He informed the plaintiff he would be called out for X-rays, and that he could not see the doctor until the X-rays were completed. The X-rays were done two weeks later, during which time he contends Ferrorow refused to see him, despite the fact that he suffered severe pain, and was forced to walk on crutches with a broken leg.

Defendant Wade informed him the X-rays revealed a break, with bones that had begun to heal incorrectly, and that he would have to be treated at an outside hospital. He underwent an MRI and surgery was performed on December 9, 2011, involving re-breaking his bone and the insertion of a plate, due to the delayed care. He claims he informed Wade he was in pain and could not get pain medication. He further claims his physical therapy was delayed, and not received until five months after having been prescribed. He contends he was informed through another staff member that Wade had refused to see him.

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

Lastly, he claims that Wade denied him special shoes in April of 2012, informing him that South Bay does not have a budget for the shoes, although he claims they have special boots which he was not given. He seeks monetary and injunctive relief.

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).

Because 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. In the context of a pretrial detainee claim of denial of medical care, the standards are the same. Id.

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.

In this case, the plaintiff states he was denied adequate medical treatment for a broken leg, resulting in long periods of pain and suffering, and that the delay in medical treatment resulted in a surgery requiring his leg be re-broken and a plate inserted. The plaintiff has stated a claim of denial of adequate medical treatment against the two defendants.

B. Recommendation

It is therefore recommended as follows:

1. The case shall proceed against Defendants Ferrerow and Wade for denial of adequate medical treatment.
2. Service will be ordered by separate order.

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

Dated at Miami, Florida, this 7th day of February, 2013.



UNITED STATES MAGISTRATE JUDGE

cc: Willie Watts, Pro Se
#044312
South Bay Correctional Facility
Address of record

7753/ph

UNITED STATES DISTRICT COURT
Southern District of Florida
Ft. Myers Division

Case No. 12-81423-CIV-RYSKAMP
MAGISTRATE JUDGE P.A. WHITE

WILLIE WATTS,

Plaintiff,

vs.

NURSE FERROROW, et al.,

Defendants.

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

COME NOW, the Defendants, NURSE D. FERROROW (hereafter "FERROROW" and ARNP JOHN G. WADE (hereafter "WADE"), by and through their undersigned counsel, and file their Answer and Affirmative Defenses as follows:

STATEMENT OF CLAIMS

1. Without knowledge therefore denied.
2. Without knowledge therefore denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Without knowledge therefore denied.

Watts v. Ferrerow, et al.
Case No.: 12-cv-81423
Defendants' Answers & Affirmative Defenses
Page 2

8. Denied.
9. Denied.
10. Without knowledge therefore denied.
11. Denied in that the medical records speak for themselves.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied..
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.

RELIEF REQUESTED

Defendants deny any allegations made by Plaintiff in the "RELIEF" portion of the Complaint.

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Case No.: 12-cv-81423
Defendants' Answers & Affirmative Defenses
Page 3

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint is a medical malpractice claim and is barred based upon Fla. Stat. § 766.106 and therefore should be dismissed.

SECOND AFFIRMATIVE DEFENSE

The allegations against the Defendants do not rise to the level of a constitutional claim in that the allegations in Plaintiff's statement of claim are nothing more than a disagreement over the medical care that he received.

THIRD AFFIRMATIVE DEFENSE

At all times material hereto, the Defendants acted in good faith when dealing with the allegations in the Plaintiff's Complaint.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint fails to state a cause of action against the Defendants.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to comply with any and all conditions precedent to bringing these claims against the Defendants, and his claims against Defendants are, therefore, precluded.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to comply with any and all administrative procedures prior to

Watts v. Ferrerow, et al.
Case No.: 12-cv-81423
Defendants' Answers & Affirmative Defenses
Page 4

bringing these claims against the Defendants and his claims against the Defendants are, therefore, precluded.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to comply with any and all grievance procedures before bringing his claims against the Defendants and his claims against the Defendants are, therefore, precluded.

EIGHTH AFFIRMATIVE DEFENSE

The negligence of the Plaintiff was the sole legal cause of any loss, injuries or damage to Plaintiff and, therefore, Plaintiff is precluded from recovery herein.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

That at all times material hereto, the doctrine of comparative fault was applicable to the Plaintiff's lawsuit and, therefore, the Plaintiff's alleged claims for damages against the Defendants should be reduced and/or extinguished pursuant to the doctrine of comparative fault.

DEMAND FOR JURY TRIAL

Defendants demand trial by jury on all issues so triable as of right.

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Case No.: 12-cv-81423
Defendants' Answers & Affirmative Defenses
Page 5

By s/**Gregory A. Kummerlen**
Gregory A. Kummerlen, Esquire
Florida Bar No. 595691
Attorneys for Defendants
WIEDERHOLD, MOSES, KUMMERLEN
& WARONICKI, P.A.
560 Village Blvd., Suite 240
West Palm Beach, Florida 33409
561-615-6775; Fax: 561-615-7225
Gkummerlen@wmrfla.com

I HEREBY CERTIFY that on this 27th day of March, 2013 I electronically filed the foregoing with the Clerk of the Middle District Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant: Willie Watts, DC #044312, South Bay Correctional Facility, P.O. Box 7171, South Bay, FL 33493-7171.

By s/**Gregory A. Kummerlen**
Gregory A. Kummerlen, Esquire
Florida Bar No. 595691
Attorneys for Defendants
WIEDERHOLD, MOSES, KUMMERLEN
& WARONICKI, P.A.
560 Village Blvd., Suite 240
West Palm Beach, Florida 33409
561-615-6775; Fax: 561-615-7225
Gkummerlen@wmrfla.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-81423-CIV-RYSKAMP
MAGISTRATE JUDGE P. A. WHITE

WILLIE WATTS, :
 :
 Plaintiff, :
 : ORDER SCHEDULING PRETRIAL
 v. : PROCEEDINGS WHEN PLAINTIFF
 : IS PROCEEDING PRO SE
 NURSE D. FERROROW, et al., :
 :
 Defendants. :

The plaintiff in this case is incarcerated, without counsel, so that it would be difficult for either the plaintiff or the defendants to comply fully with the pretrial procedures required by Local Rule 16.1 of this Court. It is thereupon

ORDERED AND ADJUDGED as follows:

1. All discovery methods listed in Rule 26(a), Federal Rules of Civil Procedure, shall be completed by **July 26, 2013**. This shall include all motions relating to discovery.

2. All motions to join additional parties or amend the pleadings shall be filed by **August 9, 2013**.

3. All motions to dismiss and/or for summary judgment shall be filed by **August 30, 2013**.

4. On or before **September 13, 2013**, the plaintiff shall file with the Court and serve upon counsel for the defendants a document called "Pretrial Statement." The Pretrial Statement shall contain the following things:

- (a) A brief general statement of what the case is about;
- (b) A written statement of the facts that will be offered by oral or documentary evidence at trial; this means that the plaintiff must explain what he intends to prove at trial and how he intends to prove it;
- (c) A list of all exhibits to be offered into evidence at the trial of the case;
- (d) A list of the full names and addresses of places of employment for all the non-inmate witnesses that the plaintiff intends to call (the plaintiff must notify the Court of any changes in their addresses);
- (e) A list of the full names, inmate numbers, and places of incarceration of all the inmate witness that plaintiff intends to call (the plaintiff must notify the Court of any changes in their places of incarceration); and
- (f) A summary of the testimony that the plaintiff expects each of his witnesses to give.

5. On or before **September 27, 2013**, defendants shall file and serve upon plaintiff a "Pretrial Statement," which shall comply with paragraph 4(a)-(f).

6. Failure of the parties to disclose fully in the Pretrial Statement the substance of the evidence to be offered at trial may result in the exclusion of that evidence at the trial. Exceptions will be (1) matters which the Court determines were not discover-

able at the time of the pretrial conference, (2) privileged matters, and (3) matters to be used solely for impeachment purposes.

7. If the plaintiff fails to file a Pretrial Statement, as required by paragraph 4 of this order, paragraph 5 of this order shall be suspended and the defendants shall notify the Court of plaintiff's failure to comply. The plaintiff is cautioned that failure to file the Pretrial Statement may result in dismissal of this case for lack of prosecution.

8. The plaintiff shall serve upon defense counsel, at the address given for him/her in this order, a copy of every pleading, motion, memorandum, or other paper submitted for consideration by the Court and shall include on the original document filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the pleading, motion, memorandum, or other paper was mailed to counsel. All pleadings, motions, memoranda, or other papers shall be filed with the Clerk and must include a certificate of service or they will be disregarded by the Court.

9. A pretrial conference may be set pursuant to Local Rule 16.1 of the United States District Court for the Southern District of Florida, after the pretrial statements have been filed. Prior to such a conference, the parties or their counsel shall meet in a good faith effort to:

- (a) discuss the possibility of settlement;
- (b) stipulate (agree) in writing to as many facts and issues as possible to avoid unnecessary evidence;
- (c) examine all exhibits and documents proposed to be used at the trial, except

that impeachment documents need not be revealed;

- (d) mark all exhibits and prepare an exhibit list;
- (e) initial and date opposing party's exhibits;
- (f) prepare a list of motions or other matters which require Court attention; and
- (g) discuss any other matters that may help in concluding this case.

10. All motions filed by defense counsel must include a proposed order for the undersigned Magistrate Judge's signature.

DONE AND ORDERED at Miami, Florida, this 28 day of March, 2013.

s/Patrick A. White
UNITED STATES MAGISTRATE JUDGE

cc: Willie Watts, Pro Se
DC #044312
South Bay Correctional Facility
600 U.S. Highway 27 South
South Bay, FL 33493

Gregory A. Kummerlen, Esq.
Wiederhold, Moses, et al.
560 Village Boulevard, Suite 240
P. O. Box 3918
West Palm Beach, FL 33402

Hon. Kenneth L. Ryskamp, United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No.: 12-CV-81423-RYSKAMP/HOPKINS

WILLIE WATTS,

Plaintiff,

v.

NURSE FERROROW et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATIONS OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court on the report of United States Magistrate Judge White [DE 9] entered on February 7, 2013. Defendants filed no objections to the Magistrate's report. This matter is ripe for adjudication.

The Court has conducted a *de novo* review of the report and pertinent portions of the record. Accordingly, it is hereby

ORDERED AND ADJUDGED that

- (1) The report of United States Magistrate Judge White [DE 9] be, and the same hereby is **RATIFIED, AFFIRMED and APPROVED** in its entirety;
- (2) This case shall proceed against Defendants Ferrorow and Wade for denial of adequate medical treatment.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 16 day of July, 2013.

/s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE