



Miller v. Sims et al

2024 | Cited 0 times | N.D. Indiana | April 18, 2024

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION ISAAC MILLER, Plaintiff,

v.

CAUSE NO. 3:23CV197-PPS/MGG SIMS, et al., Defendants.

OPINION AND ORDER Isaac Miller, a prisoner without a lawyer, filed a complaint. ECF 1. Under 28 U.S.C. § 1915A, I must screen the complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. To proceed beyond the

Bell Atlantic Corp. v. Twombly claim has facial plausibility when the pleaded factual content allows the court to draw the Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Because Miller is proceeding without counsel, I must give his allegations liberal construction. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Notably, however, a plaintiff can plead himself out of court if he pleads facts that preclude relief. See Edwards v. Snyder, 478 F.3d 827, 830 (7th Cir. 2007); McCready v. Ebay, Inc., 453 F.3d 882, 888 (7th Cir. 2006). Miller alleges he was escorted, in handcuffs, to his cell at the Indiana State Prison by Officer Sims and Officer Sanders on March 25, 2021, after taking a shower. When they arrived, Officer Sims took him back into the cell with the handcuffs still on. Miller ECF 1 at 2. Officer but he eventually stepped out and went to the port to uncuff Miller. Id. However, because he Miller my arm back as a reaction to him

Id. the port which caused Miller pain. Id. Before he walked away, Officer Sims spit in

Neal Id.

at 3. He seeks monetary damages and to be transferred to a different prison.

The Eighth Amendment prohibits cruel and unusual punishment including the application of excessive force against prisoners convicted of crimes. McCottrell v. White, 933 F.3d 651, 662 (7th Cir. 2019). of an excessive force -faith effort to maintain or restore discipline, but maliciously and sadisticall Hendrickson v. Cooper, 589 F.3d 887, 890 (7th Cir. 2009) (internal citation omitted). Deference is given to prison officials when the use of force involves security measures taken to quell



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a disturbance significant risks to the safety of inmates and prison staff McCottrell, 933 F.3d at 663 (quoting Whitley v. Albers, 475 U.S. 312, 320 (1986)). Jails are dangerous places, and security officials are tasked with the difficult job of preserving order and discipline among inmates. Lewis v. Downey, 581 F.3d 467, 476 (7th Cir. 2009). It is important that prisoners follow orders given by guards. Id. at 476-77 (citing Soto v. Dickey, 744 F.2d 1260, 1267 (7th Cir. 1984)).

To compel compliance especially in situations where officers or other inmates are faced with threats, disruption, or aggression the use of summary physical force is often warranted. Id. at 477 (citing Hickey v. Reeder, 12 F.3d 754, 759 (8th Cir. 1993)). That Lewis, 581 F.3d at 477. Several factors guide the inquiry of

timate or malicious, including the need for an application of force, the threat posed to the safety of staff and inmates, the amount of force used, and the extent of the injury suffered by the prisoner. Hendrickson, 589 F.3d at 890. Of note, every malevolent touch by a prison guard gives rise to a federal cause of action. Hudson v. McMillian, 503 U.S. 1, 9- constitutional recognition de minimis uses of physical force, provided that the use of

Id. (citations and

utional law and tort law. Guitron v. Paul, 675 F.3d Id. Such is

not the case with constitutional law. Id. must be able to handle, sometimes manhandle, their charges, if a building crammed there, after all) is to be manag Id. Miller alleges Officer Sims spit on him after a heated exchange. While this is plainly unprofessional conduct and should, if true, be grounds for employee discipline, it is not the type of physical contact that gives rise to an Eighth Amendment excessive force claim. Hudson, 503 U.S. at 9-10; Guitron, 675 F.3d at 1046. See also DeMallory v. Cullen, 855 F.2d 442, 444 (7th Cir. 1988) (Seventh Circuit in agreement with the district disposition that).

In his complaint, Miller also makes reference to Officer Sims aggressively snatching his arm through the cuff port because Miller jerked it away when Officer Sims tried to remove the handcuffs. But that what he is actually suing about is the spitting incident. But even if he was attempting to proceed based on the arm-snatching inc Guitron, 675 F.3d at 1046; see also Outlaw v. Newkirk, 259 F.3d 833, 839 (7th Cir. 2001)

was found to be relatively minor force that was not actionable under the Constitution

quoting Hudson, 503 U.S. at 9 10). Therefore, stated any viable constitutional claims against Officer Sims. Miller has named Warden Neal as a defendant as well for failing to ensure his rights were protected. For the reasons I outlined above, Officer Sims did not violate this does not state a claim. Moreover, Warden Neal cannot be held personally liable for the actions of Officer Sims, as supervisor



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liability is insufficient to state a claim. See e.g., *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018) and *Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) (both noting that liability under 42 U.S.C. § 1983 is based on personal responsibility and that prison officials cannot be held liable for damages solely because they hold supervisory positions).

ve pleadings to be corrected, *Abu-Shawish v. United States* discretion to deny leave to amend where . . . the amendmen *Hukic v.*

Aurora Loan Servs., 588 F.3d 420, 432 (7th Cir. 2009). For the reasons previously explained, such is the case here. ACCORDINGLY:

This case is DISMISSED pursuant to 28 U.S.C. § 1915A because the complaint does not state any viable claims. SO ORDERED on April 18, 2024.

/s/ Philip P. Simon JUDGE UNITED STATES DISTRICT COURT

