



## Cox v. Mecklenburg County Jail et al

2019 | Cited 0 times | W.D. North Carolina | June 17, 2019

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

3:18-cv-00645-FDW SCOTT MICHAEL COX, )

Plaintiff, )

vs. )

ORDER MECKLENBURG COUNTY JAIL, ) et al., )

Defendants. ) \_\_\_\_\_)

THIS MATTER 42 U.S.C. § 1983. [Doc. 1]. See 28 U.S.C. §§ 1915(e)(2); 1915A. On January 17, 2019, the Court entered an order waiving the initial filing fee and directing monthly payments be made from

I. BACKGROUND na, currently incarcerated at Mecklenburg County Jail in Charlotte, North Carolina. Plaintiff filed this action on December 3, 2018, pursuant to 42 U.S.C. § 1983, naming the following as Defendants: , identified as a nurse at the Jail; (3) FNU Harris, identified as a nurse at the Jail; (4) FNU Squibb, identified as a nurse practitioner at the Jail; (5) FNU Brown, identified as a nurse practitioner at the Jail; and (6) Jeffrey Eason, identified as an Internal Affairs Investigator. [Doc. 1]. Although not specifically enumerated as such, Plaintiff claim is in the nature of one for deliberate indifference to serious medical needs in violation of his Eighth Amendment. [Doc. 1]. Plaintiff alleges that he has been deprived of proper treatment for his serious medical condition, HIV. Plaintiff was arrested on September 21, 2018. Plaintiff states that there was a 10-day delay in his receiving any of his necessary HIV medication after he got to the Jail and that he has been deprived of some of his necessary medication during the duration of his incarceration. Plaintiff, however, makes no particularized allegations regarding which Defendant or Defendants allegedly withheld his medication or were responsible for any decisions relative to which medications he would receive. Plaintiff states that due to not receiving his medications properly, he is exhibiting certain signs and symptoms consistent with resistance to his medication. [Id. at 3-4]. As to Defendant Eason, Plaintiff states that his husband contacted Defendant Eason regarding the matter had been addressed, when in fact nothing had been done. [Id. at 7]. Plaintiff did not allege



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when this interaction between his husband and Defendant Eason took place.

Plaintiff seeks injunctive relief and monetary damages. [Id. at 4]. II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to § 1915(e)(2). Furthermore, under

§ 1915A the Court must conduct an initial review and identify and dismiss the complaint, or any portion of the complaint, if it is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune to such relief.

In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Furthermore, a pro se complaint must be construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his Complaint which set forth a claim that is cognizable under federal law. , 901 F.2d 387 (4th Cir. 1990). III. DISCUSSION

Claims under 42 U.S.C. § 1983 based on an alleged lack of or inappropriate medical *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To state a claim under the Eighth Amendment, a

Id. a substantial risk of serious injury to the detainee or that they actually knew of and ignored a

*Young v. City of Mt. Ranier*, 238 F.3d 567, 575-76 (4th deliberate indifference to a serious medical need, the treatment must be so grossly incompetent,

*Miltier v. Beorn*, 896 F.2d 848, 851 (4th Cir. 1990).

Allegations that might be sufficient to support negligence and medical malpractice claims do not, without more, rise to the level of a cognizable § 1983 claim. *Estelle*, 429 U.S. at 106; *Grayson v. Peed* standard a showing of mere negligence *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Johnson*

*v. Quinones* in his diagnosis or treatment, no constitutional issue is raised absent evidence of abuse, intentional *Stokes v. Hurdle*, 393 F. Supp. 757, 762 (D. Md. 1975), , 535 F.2d 1250 (4th Cir. 1976). The constitutional right is to medical care. No right exists to the type or scope of care desired by the individual prisoner. Id. at 763. Therefore, a *Wright v. Collins*, 766

physician for allegedly discharging the plaintiff too early from a medical clinic, as such claim did not rise to



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Plaintiff alleges that for a period of at least over three months he was denied necessary medication to treat a serious medical condition. deficiencies. While the deprivation of medication for a serious medical condition is certainly

generally sufficient to state a § 1983 claim under the Eighth Amendment, the Plaintiff has alleged no particularized conduct relative to the healthcare provider Defendants in this case. First, Plaintiff has not alleged how the various named Defendants personally participated in the alleged violations deliberately indifferent to Pla

Section 1983 in his individual capacity, the plaintiff must demonstrate that the defendant personally participated in the alleged denial of rights. , 436 U.S. 658, 663 n.7 (1978). Rather than dismissing the Complaint, however, the Court will allow Plaintiff the opportunity to cure the defects by amending his Complaint.

In the amended complaint, Plaintiff must re-allege all of his claims against all persons he wishes to name as Defendants, and he must allege how each named Defendant personally s. That is, Plaintiff has not alleged sufficiently in the Complaint how Defendants Steele, Harris, Squibb, and Brown each personally participated in depriving Plaintiff of his constitutional rights. Along the same lines, it is well-settled that Defendants cannot be held liable merely by virtue of their supervisory positions. See , 436 U.S. 658, 694 (1978) (stating that under § 1983, liability is personal in nature, and the doctrine of respondeat superior does not apply). Therefore, the Court warns Plaintiff that, in his amended complaint, if any of the Defendants that Plaintiff originally named were named only in their supervisory capacity, they are subject to dismissal, unless he alleges some personal participation by any s constitutional rights.

Further, Plaintiff should also include any available information regarding the dates or time frames in which any specific conduct took place, including the alleged interaction between Plai The Plaintiff is advised that the allegations in his original Complaint against Defendant Eason do not appear sufficient to state a claim for an Eighth Amendment violation. The Court advises Plaintiff that his amended complaint must be complete in and of itself. This is because the amended complaint will supersede the original complaint, meaning the original complaint will no longer have any force. In other words, Plaintiff may not amend the complaint he simply cannot add on to what he has already alleged in the complaint. To this extent, the Court will instruct the Clerk to mail Plaintiff a new Section 1983 form for Plaintiff to submit an amended complaint, if he so wishes.

As to Defendant Mecklenburg County Jail, of Section 1983, and therefore cannot be sued in a Section 1983 action.

by non-parties to this action. [Docs. 6, 8, 9, 10, & 11]. The Plaintiff is cautioned that only he, the Plaintiff, may file documents on his own behalf with the Court and that improperly filed letters will not be considered. IV. CONCLUSION



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For the reasons stated herein, Plaintiff shall have thirty (30) days in which to amend his complaint in accordance with this order. Defendant Mecklenburg County Jail will be dismissed. IT IS, THEREFORE, ORDERED that:

1. Plaintiff shall have thirty (30) days from the date of this Order in which to amend the

complaint, particularizing his claims and providing facts to support his legal claims and identifying individual Defendants subject to suit. If Plaintiff fails to amend the complaint within the time limit set by the Court, this action will be dismissed without prejudice and without further notice to Plaintiff. 2. The Clerk of Court is respectfully instructed to mail Plaintiff a new § 1983 form. 3. Defendant Mecklenburg County Jail is dismissed. See 28 U.S.C. §§ 1915(e); 1915A. IT IS SO ORDERED.

Signed: June 17, 2019

