

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14316
Non-Argument Calendar

D.C. Docket No. 2:14-cv-02187-VEH-JHE

MICHAEL DARNELL OLIVER,

Plaintiff-Appellant,

versus

WARDEN,
ASSISTANT WARDEN,
CAPTAIN WHITE,
CAPTAIN BALDWIN,
SARGENT TAYLOR, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(February 12, 2019)

Before TJOFLAT, EDMONDSON, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Michael Oliver, an Alabama prisoner proceeding pro se,¹ filed a 42 U.S.C. § 1983 civil action, alleging violations of his First, Fourth, Eighth, and Fourteenth Amendment rights. Oliver named as defendants several people affiliated with the William E. Donaldson Correctional Facility: (1) Wardens Cheryl Price and Angela Miree (“Wardens”); (2) Captain Kevin White, Captain Jeffery Baldwin, Sergeant Trenton Eads, Sergeant Carl Sanders, and Correctional Officers Sterling Steed, Alphonso Barber, Samuel Snelson, Taurus Nath, James Washington, and Aaron Voyles (“Correctional Defendants”); and (3) Dr. Timothy Iliff and Nurse Roseanne Clum-Cordingley (“Medical Defendants”). On appeal, Oliver challenges the district court’s dismissal of his claims against the Medical Defendants; the district court’s grant of partial summary judgment in favor of the Wardens and the Correctional Defendants; and the district court’s denial of Oliver’s motion for a new trial. No reversible error has been shown; we affirm.²

¹ We construe liberally pro se pleadings. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1989).

² We note that Oliver is a “three-striker” under the Prison Litigation Reform Act and is, thus, barred from proceeding in forma pauperis “unless [he] is under imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g). In an earlier appeal, we vacated the district court’s dismissal of Oliver’s complaint and remanded the case for further proceedings after determining that Oliver had alleged facts sufficient to satisfy the “imminent danger” exception. See Oliver v. Warden, 669 F. App’x 518 (11th Cir. 2016) (unpublished).

I. Background

The magistrate judge issued a 53-page report and recommendation. The magistrate judge construed liberally Oliver's complaint as asserting these claims: (1) that the Medical Defendants showed deliberate indifference to Oliver's serious medical needs -- in violation of the Eighth Amendment -- by discontinuing Oliver's prescription for his inhaler and his allergy medicine on 26 August 2014; (2) that Officers Nath, Eads, and Sanders were deliberately indifferent to Oliver's serious medical needs when they refused to order medical staff to provide Oliver with non-prescribed medication; (3) that Officers Barber, Nath, and Washington showed deliberate indifference to Oliver's serious medical needs by refusing to take Oliver to three medical appointments on 26 August, 2 September, and 9 September 2014; (4) that Warden Miree and Officers Baldwin, White and Snelson used excessive force -- in violation of the Eighth Amendment -- during a cell search on 10 September 2014; (5) that Warden Miree and Officers White, Baldwin, Steed, and Voyles used excessive force against Oliver during a 11 September 2014 cell extraction; (6) that Officers Nath, Eads, Sanders, and Steed subjected Oliver to cruel and unusual conditions of confinement -- in violation of the Eighth

Amendment -- by denying Oliver meals on 26 August and 11 September 2014; (7) that the Wardens and Officer White subjected Oliver to cruel and unusual conditions of confinement by placing him on dry/reduced content cell status between 10 September and 16 December 2014; (8) that the Wardens violated Oliver's rights to access the courts and to free speech -- in violation of the First Amendment -- when they denied Oliver access to his personal and legal mail; and (9) that Warden Miree and Officers Nath and Steed deprived Oliver of his right to be free from confinement -- in violation of the Fourteenth Amendment's Due Process Clause -- by placing Oliver in disciplinary segregation between 10 September and 14 December 2014.

The magistrate judge recommended that Oliver's claim against the Medical Defendants be dismissed for failure to exhaust his administrative remedies. The magistrate judge also recommended that the district court grant summary judgment in favor of the Wardens and the Correctional Defendants on each of Oliver's remaining claims.

In a 41-page order, the district court adopted in part and rejected in part the magistrate judge's recommendations. The district court first dismissed without prejudice Oliver's claims against the Medical Defendants for failure to exhaust administrative remedies.

The district court then determined -- with the exception of one claim -- that the Wardens and the Correctional Defendants were entitled to summary judgment. For these claims, the district court concluded both that Oliver had demonstrated no constitutional violation and -- in the alternative -- had demonstrated no violation of a clearly established constitutional right for purposes of qualified immunity.

The district court, however, denied the Wardens summary judgment on one claim. Although the district court concluded that Oliver's initial placement on dry/reduced content cell status was not unlawful, the district court determined that a genuine issue of material fact existed about whether Oliver's alleged continued placement on dry/reduced content cell status for over three months constituted a violation of the Eighth Amendment.

The case then proceeded to a jury trial against the Wardens on the single issue of whether Oliver's alleged three-month confinement on dry/reduced content cell status was unconstitutional. The jury issued a verdict in favor of the Wardens. The district court later denied Oliver's motion for a new trial.

II. Discussion

A.

We review de novo a district court's dismissal for failure to exhaust administrative remedies under the Prison Litigation Reform Act ("PLRA"). Alexander v. Hawk, 159 F.3d 1321, 1323 (11th Cir. 1998). Under the PLRA, a prisoner may not bring an action for prison conditions under section 1983 until he has first exhausted his administrative remedies. 42 U.S.C. § 1997e. The PLRA's exhaustion requirement "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532 (2002). The question of exhaustion is a threshold matter that we must consider before addressing the merits of a claim. Chandler v. Crosby, 379 F.3d 1278, 1286 (11th Cir. 2004).

That Donaldson had a formal grievance procedure in effect during the pertinent time of Oliver's incarceration is undisputed. Pursuant to the grievance procedure, all inmates who are dissatisfied with their medical treatment must submit a health-care grievance form. The record shows that Oliver submitted no grievance forms about his medical treatment during 2014. Because Oliver failed to

exhaust his administrative remedies before filing suit against the Medical Defendants, Oliver's claims were dismissed properly under the PLRA.

B.

Construed liberally, Oliver next challenges the district court's partial grant of summary judgment in favor of the Correctional Defendants and the Wardens. On appeal, Oliver focuses on (1) his First Amendment claim; (2) his Eighth Amendment claim for deliberate indifference stemming from his missed medical appointments; and (3) his Eighth Amendment excessive force claim arising from the 11 September 2014 cell extraction. Accordingly, we will limit our discussion to these claims.³

We review de novo the district court's grant of summary judgment, viewing the evidence and drawing all reasonable inferences in favor of the non-moving party. Burton v. Tampa Hous. Auth., 271 F.3d 1274, 1276-77 (11th Cir. 2001). Summary judgment is appropriate "if the movant shows that there is no genuine

³ About Oliver's remaining claims, we note that the magistrate judge and district court each undertook a thorough and careful analysis of Oliver's claims, viewing the record evidence in the light most favorable to Oliver and construing liberally the claims asserted in Oliver's complaint. We conclude the district court's reasoning to be sound and consistent with the record and the applicable law. Accordingly, we affirm the district court's grant of summary judgment on Oliver's remaining claims without further discussion.

dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

1. First Amendment

We have said that the First Amendment protects the right to send and to receive mail. Al-Amin v. Smith, 511 F.3d 1317, 1333 (11th Cir. 2008). “[I]t is well-established that a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.” Id.

Construed in the light most favorable to Oliver, the record demonstrates no violation of Plaintiff’s First Amendment rights. Nothing evidences that the Wardens deprived Oliver of his legal and personal mail. In their affidavits in support of their motion for summary judgment, the Wardens denied that they instructed correctional officers to withhold Oliver’s mail. Oliver’s broad assertions to the contrary -- which are neither based on personal knowledge nor supported by record evidence -- are insufficient to create a genuine issue of material fact. See Macuba v. Deboer, 193 F.3d 1316, 1322 (11th Cir. 1999) (under Fed. R. Civ. P. 56, affidavits that support or oppose a motion for summary judgment must be

made on personal knowledge); Bald Mountain Park, Ltd. v. Oliver, 863 F.2d 1560, 1563 (11th Cir. 1989) (“Mere conclusions and unsupported factual allegations are legally insufficient to create a dispute to defeat summary judgment.”). Moreover, to the extent Oliver contends he was denied his First Amendment right to access the courts, Oliver has demonstrated no prejudice or actual injury. See Wilson v. Blankenship, 163 F.3d 1284, 1290-91 (11th Cir. 1998) (to prevail on an access-to-court claim, a prisoner must show that defendants “impeded the inmate’s pursuit of a nonfrivolous, post-conviction claim or civil rights action.”).

2. Eighth Amendment

In the prison context, “[t]he Eighth Amendment can give rise to claims challenging specific conditions of confinement, the excessive use of force, and the deliberate indifference to a prisoner’s serious medical needs.” Thomas v. Bryant, 614 F.3d 1288, 1303-04 (11th Cir. 2010). To establish an Eighth Amendment violation, a prisoner must make both “an objective showing of a deprivation or injury that is sufficiently serious to constitute a denial of the minimal civilized measure of life’s necessities and a subjective showing that the official had a sufficiently culpable state of mind.” Id. at 1304 (quotations omitted).

a. Deliberate Indifference

To prove a claim for deliberate indifference, a prisoner must demonstrate a serious medical need, that defendant was deliberately indifferent to that need, and a causal connection between that indifference and the prisoner's injury. Melton v. Abston, 841 F.3d 1207, 1220 (11th Cir. 2016). A prison official acts with "deliberate indifference" when (1) the official had subjective knowledge of a risk of serious harm; (2) the official disregarded that risk; and (3) the official acted with more than mere negligence. Id. at 1223.

The district court committed no error in granting summary judgment in favor of Officers Washington, Barber, and Nath on Oliver's claim for deliberate indifference. First, the record evidences that medical staff saw Oliver for his 26 August chronic-care appointment but that the appointment could not be completed due to Oliver's refusal to cooperate.

Although Oliver missed his routine chronic-care appointments on 2 September and 9 September, nothing evidences that Oliver was experiencing acute symptoms from his asthma or that Oliver suffered a worsening of symptoms as a result of the missed appointments. Oliver was seen by medical staff on 5

September and reported no adverse symptoms arising from the missed appointment. Oliver also himself declined his medical appointment on 16 September. On this record, Oliver has demonstrated no injury that was caused by defendants' conduct.

b. Excessive Use of Force

“Under the Eighth Amendment, force is deemed legitimate in a custodial setting as long as it is applied in a good faith effort to maintain or restore discipline and not maliciously or sadistically to cause harm.” Skrnich v. Thornton, 280 F.3d 1295, 1300 (11th Cir. 2002) (quotations and alteration omitted). In determining whether force was applied “maliciously and sadistically,” we consider -- among other things -- “the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.” Id. at 1300. After considering these factors, we may draw inferences about “whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur.” Id. at 1300-01.

Generally speaking, we will not “second-guess prison officials on matters that they are better equipped to handle under the exigencies of an internal disturbance.” Wilson, 163 F.3d at 1295. We discount a prisoner’s claim of serious injury when it is only a conclusory allegation, unsupported by physical evidence, medical records, or corroborating testimony of witnesses. Bennett v. Parker, 898 F.2d 1530, 1534 (11th Cir. 1990). In cases involving video evidence, we will accept the video’s depiction instead of the prisoner’s account to the extent the video contradicts obviously the prisoner’s version of events. Pourmoghani-Esfahani v. Gee, 625 F.3d 1313, 1315 (11th Cir. 2010).

Undisputed evidence in the record (including a video recording of the cell extraction) demonstrates that the force used during Oliver’s 11 September 2014 cell extraction was reasonably necessary under the circumstances and constituted no Eighth Amendment violation. After Oliver threw urine and feces on a correctional officer and refused to be handcuffed, an extraction team was assembled to remove Oliver from his cell. Oliver charged the officers as they opened his cell door and resisted physically the officers’ efforts to restrain him. Given Oliver’s aggressive and combative behavior, the officers were justified in using some force to restrain Oliver and to maintain control of the situation.

Oliver contends -- and the video evidence does not contradict obviously -- that Officer Steed bent Oliver's fingers back and that Officer White rammed Oliver in the back with a baton during the cell extraction. We cannot say the complained-of force was out of proportion to the legitimate need for force, particularly given the absence of evidence that Oliver was injured or sought medical treatment as a result.

C.

We review a district court's denial of a motion for new trial for abuse of discretion. Blu-J, Inc. v. Kemper C.P.A. Grp., 916 F.2d 637, 643 (11th Cir. 1990). "Deference is particularly appropriate where a new trial is denied and the jury's verdict is left undisturbed." Walter Int'l. Prods., Inc. v. Salinas, 650 F.3d 1402, 1407 (11th Cir. 2011) (quotation marks omitted). "To assure that the judge does not simply substitute his judgment for that of the jury, . . . we have noted that new trials should not be granted on evidentiary grounds unless, at a minimum, the verdict is against the great -- not merely the greater -- weight of the evidence." Hewitt v. B.F. Goodrich Co., 732 F.2d 1554, 1556 (11th Cir. 1984).

The Eighth Amendment imposes duties on prison officials to provide humane conditions of confinement, to ensure that inmates receive adequate food, clothing, shelter and medical care, and to take reasonable measures to guarantee the safety of inmates. Farmer v. Brennan, 511 U.S. 825, 832 (1994). To prove a claim for unconstitutional conditions of confinement, a prisoner must demonstrate “extreme deprivations.” Thomas, 614 F.3d at 1304.

The evidence introduced at trial showed that Oliver was on dry/reduced content cell status for only 72 hours and that -- while Oliver was in administrative segregation -- he was fed regularly, was provided with a mattress and linens, had the opportunity to shower and to exercise, and was visited regularly by medical staff. In other words, Oliver was deprived of no basic necessity. Because the jury’s verdict was supported by the great weight of the evidence, the district court abused no discretion in denying Oliver’s motion for a new trial.

AFFIRMED.