

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TRAVIS WILLIAMS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 04-617-DRH
)	
OFFICER COWAN, OFFICER CLOVER,)	
LIEUTENANT TAYLOR, OFFICER)	
ELLSWORTH, OFFICER EBERS,)	
OFFICER HEIN, OFFICER WARD,)	
MAJOR INMAN, DEBBI MIDDENDORF,)	
CHARLES S. HINSLEY, RONALD)	
BOONE and JOHN COLLIER,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

HERNDON, District Judge:

Plaintiff, formerly an inmate in the Menard Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. Plaintiff previously was granted leave to proceed *in forma pauperis*, and he has tendered his initial partial filing fee as ordered.

This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**– The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**– On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; portions of this action are legally frivolous and thus subject to summary dismissal.

Plaintiff alleges that on April 7, 2004, he was taken from Menard to Peoria, Illinois, for a court appearance. He alleges that Defendant Cowan applied the restraints too tightly; after four hours, his wrists were swollen and his hands were numb. Plaintiff in turn asked Defendants Cowan and Ellsworth to loosen the cuffs, but each refused.

Plaintiff then alleges that on June 2, 2004, he was again taken to Peoria on a court writ, and again his handcuffs were too tight, this time for a period of over five hours. Despite his requests, neither Defendant Hein or Ward would loosen the cuffs. Later that day, Plaintiff states that Defendant Collier (a judge in the Tenth Judicial Circuit) and Boone (a state court employee) ignored his complaints and failed to examine his injured wrists or seek medical attention for him.

Again, on August 4, 2004, Plaintiff alleges that prior to his departure from Menard on another court writ, Defendant Taylor refused to loosen the cuffs despite “clear and visible” swelling on Plaintiff’s wrists at that time. On that same day, Defendants Clover, Ellsworth and Ebers also refused to loosen the cuffs.

Upon return to Menard, after the cuffs were removed, Plaintiff showed his injured wrists to Defendant Inman and complained about the tight cuffs. However, Inman ignored his complaints. Plaintiff also spoke with Defendant Middendorf about the injuries to his wrists. Although she inspected his wrists briefly, she denied his grievances regarding the tight handcuffs. Plaintiff also

wrote complaints to Defendant Hinsley, but Hinsley failed to respond to Plaintiff's letters and grievances.

The intentional use of excessive force by prison guards against an inmate without penological justification constitutes cruel and unusual punishment in violation of the Eighth Amendment and is actionable under Section 1983. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992); *DeWalt v. Carter*, 224 F.3d 607, 619 (7th Cir. 2000). “[W]henver prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. An inmate seeking damages for the use of excessive force need not establish serious bodily injury to make a claim, but not “every malevolent touch by a prison guard gives rise to a federal cause of action. . . . [the] prohibition of ‘cruel and unusual’ punishment necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’” *Id.* at 9-10; *see also Outlaw v. Newkirk*, 259 F.3d 833, 837-38 (7th Cir. 2001).

Applying these standards to the allegations in the complaint, the Court is unable to dismiss Plaintiff's claims of excessive force against Defendants Cowan, Ellsworth, Hein, Ward, Taylor, Clover and Ebers.

Conversely, Plaintiff has no claim against Colliers or Boone, as neither was responsible for the restraints placed on Plaintiff's wrists. Allegations regarding their failure to respond to his complaints constitute, at best, claims of negligence, but a defendant can never be held liable under § 1983 for negligence. *Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Zarnes v. Rhodes*, 64 F.3d

285, 290 (7th Cir. 1995). Colliers and Boone are therefore dismissed from this action with prejudice.

Finally, Plaintiff claims that Inman, Hinsley and Middendorf failed to respond appropriately to his complaints and grievances. “[A] state’s inmate grievance procedures do not give rise to a liberty interest protected by the due process clause.” *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1995). The Constitution requires no procedure at all, and the failure of state prison officials to follow their own procedures does not, of itself, violate the Constitution. *Maust v. Headley*, 959 F.2d 644, 648 (7th Cir. 1992); *Shango v. Jurich*, 681 F.2d 1091 (7th Cir. 1982). Accordingly, these Defendants are also dismissed from this action with prejudice.

DISPOSITION

IT IS HEREBY ORDERED that Defendants **HINSLEY, INMAN, MIDDENDORF, BOONE** and **COLLIER** are **DISMISSED** from this action with prejudice.

The Clerk is **DIRECTED** to prepare Form 1A (Notice of Lawsuit and Request for Waiver of Service of Summons) and Form 1B (Waiver of Service of Summons) for Defendants **COWAN, ELLSWORTH, HEIN, WARD, TAYLOR, CLOVER** and **EBERS**. The Clerk shall forward those forms, USM-285 forms submitted by Plaintiff, and sufficient copies of the complaint to the United States Marshal for service.

The United States Marshal is **DIRECTED**, pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, to serve process on Defendants **COWAN, ELLSWORTH, HEIN, WARD, TAYLOR, CLOVER** and **EBERS** in the manner specified by Rule 4(d)(2) of the Federal Rules of Civil Procedure. Process in this case shall consist of the complaint, applicable forms 1A and 1B, and this Memorandum and Order. For purposes of computing the passage of time under Rule 4(d)(2), the Court and all parties will compute time as of the date it is mailed by the Marshal, as

noted on the USM-285 form.

With respect to former employees of Illinois Department of Corrections who no longer can be found at the work address provided by Plaintiff, the Department of Corrections shall furnish the Marshal with the Defendant's last-known address upon issuance of a court order which states that the information shall be used only for purposes of effectuating service (or for proof of service, should a dispute arise) and any documentation of the address shall be retained only by the Marshal. Address information obtained from I.D.O.C. pursuant to this order shall not be maintained in the court file, nor disclosed by the Marshal.

The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received. If a waiver of service is not returned by a defendant within **THIRTY (30) DAYS** from the date of mailing the request for waiver, the United States Marshal shall:

- Request that the Clerk prepare a summons for that defendant who has not yet returned a waiver of service; the Clerk shall then prepare such summons as requested.
- Personally serve process and a copy of this Order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Federal Rule of Civil Procedure 4(d)(2) unless the defendant shows good cause for such failure.

Plaintiff is **ORDERED** to serve upon defendant or, if appearance has been entered by counsel, upon that attorney, a copy of every further pleading or other document submitted for

consideration by this Court. He shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date that a true and correct copy of any document was mailed to defendant or his counsel. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the complaint, and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to a United States Magistrate Judge for further pre-trial proceedings.

Further, this entire matter is hereby **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral.*

Plaintiff is under a continuing obligation to keep the Clerk and each opposing party informed of any change in his whereabouts. This shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs.

IT IS SO ORDERED.

DATED: June 12, 2006.

/s/ David RHerndon
DISTRICT JUDGE